

*United States Court of Appeals
for the Second Circuit*



APPENDIX

ORIGINAL

75-6121

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANNICK M. BERNNS,

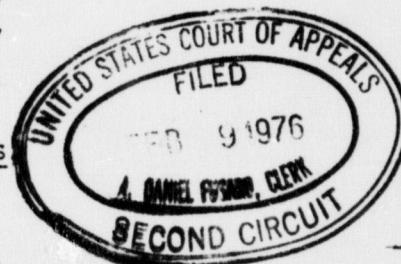
Plaintiff-Appellee,

B
PLS

-against-

CIVIL SERVICE COMMISSION, CITY OF NEW YORK,
ALPHONSE E. D'AMBROSE, Personnel Director,
Department of Personnel, MICHAEL J. CODD,
as Police Commissioner, City of New York,
and HARRISON J. GOLDIN, as Comptroller,
City of New York,

Defendants-Appellants



On Appeal From an Order of the United
States District Court for the Southern
District of New York

JOINT APPENDIX

W. BERNARD RICHLAND,
Corporation Counsel of the
City of New York,
Attorney for Defendants-Appellants.
Municipal Building,
New York, New York 10007.
566-4337

SAMUEL RESNICOFF, ESQ.,
Attorney for Plaintiff-Appellee,
280 Broadway
New York, New York 10007.
DI 9-3896

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
May 1, 75	Filed complaint and summons issued.
May 16, 75	Filed Summons with Marshal's Return Served. Civil Service Commission, City of NY by Devora Cohn, 5/6/75. Alphonse E. D'Ambrose by 5/6/75. Michael J. Codd b Henry Rauch, 5/12/75 Harrison J. Goldin by Florence Fuchs, 5/12/75
May 29, 75	Filed Answer of defts
June 6, 75	Filed Defts Notice of Motion for Summary Judgment ret. 6/19/75, Rm 1904.
June 6, 75	Filed Defts Memorandum of Law
Oct. 21, 75	Filed Opinion #43268. Pltff's motion for summary judgment is granted. Proposed termination is declared to be unlawful and defts are permanently enjoined from terminating her employment etc. Defts' motion for summary judgment is denied. So Ordered. Tenney, J. (recd this date)
Oct. 22, 75	Filed Affdvt by Thomas P. Curley re: letter sent to Director, etc.
Oct. 22, 75	(recd this date) Filed Affdvt by Thomas P. Curley r : letter sent to Director, etc.
Oct. 22, 75	(recd this date) Filed pltf's affdvt and Notice of cross-motion re: Summary Judgment in favor of pltff, etc. ret. 06/19/75
Oct. 22, 75	(recd this date) Filed Memorandum in support of pltff's cross-motion for summary judgment and in opposition to defts' motion for summary judgment.

DOCKET ENTRIES

DATE	FILING-PROCEEDINGS
Oct. 22, 75	(recd this date) Filed Defts' Reply Memorandum
Oct. 22, 75	Filed Judgment, Ordered that pltff have judgment against defts dismissing complaint. Clk. (mn)
Nov. 18, 75	Filed Defts Notice of appeal from judgment entered 10/22/75 wherein it is adjudged pltff have judgment against defts. (mailed copy to W. Bernard Richland & Samuel Resnicoff, Esq. on 11/20/75)

SUMMONS

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

ANNICK M. BERNS,

Plaintiff.

v.

CIVIL SERVICE COMMISSION, CITY OF NEW YORK,
 ALPHONSE E. D'AMBROSE, Personnel Director,
 Department of Personnel; MICHAEL J. CODE
 as Police Commissioner, City of New York,
 and HARRISON J. GOLDIN, as Comptroller, City
 of New York.

Defendant

xx.

Defendants.

and Plaintiff

xx.

74C 12

SUMMONS

To the above named Defendant(s):

You are hereby summoned and required to serve upon

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

SAMUEL PESNICOFF, Esq.

[Seal]

Plaintiff's attorney , whose address

280 Broadway
New York, N.Y. 10007

Date

6

Tel.: DIGby 9-3896

Debtors Court 280 Broadway

Answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Raymond F. Bergkamp
Clerk of Court.
H. J. Castello
Deputy Clerk.

Date: May 1, 1975.

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

I HEREBY CERTIFY THAT I SERVED THIS ON THE

Date of

13

BEIJING ON BEHALF OF HELL

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNICK M. BERNS,

Plaintiff,

-against-

CIVIL SERVICE COMMISSION, CITY OF
NEW YORK, ALPHONSE E. D'AMBROSE,
Personnel Director, Department of
Personnel; MICHAEL J. CODD, as
Police Commissioner, City of New
York, and HARRISON J. GOLDIN, as
Comptroller, City of New York,

Defendants.

PRELIMINARY STATEMENT

(1) The defendant CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK on or about December 20, 1972 duly announced an open competitive written civil service examination for the position of POLICE ADMINISTRATIVE AIDE, City of New York, to be held February 3, 1973.

(2) The said announcement provided in part as follows:

"MINIMUM REQUIREMENTS: High School graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate; and either two years of paid full-time clerical experience, or two years of active military duty, or one year of full-time study (30 credits) in an

COMPLAINT

accredited college or university, or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of all candidates.

The period of actual attendance in an approved public service career training (M.C.D.A.) program may be credited on a month-for-month basis toward the required two years of clerical experience.

The minimum requirements must be met by the last date for the receipt of applications.

All candidates who file applications will be summoned for the written test prior to the determination of whether they meet the minimum requirements. The experience papers of passing candidates only will be evaluated.

Form A experience paper must be filled with the application."

(3) Plaintiff, a citizen of the United States and a resident of the State of New York, who was born and educated in France, submitted an application to compete in said competitive examination and attached to her application her Diploma from ECOLE-PRIVEE DE FILLES SAINT-MARIE, a private Catholic school in France.

(4) Plaintiff successfully competed in said examination and was appointed from the eligible list on April 20, 1973 to the position of Police Administrative Aide.

(5) Plaintiff was required to serve a probationary period of six months which expired on

COMPLAINT

October 29, 1973.

(6) Plaintiff's services at a probationer were satisfactory and she was retained on October 29, 1973.

(7) On or about November 8, 1974, the defendant D'AMBROSE, Personnel Director, advised plaintiff that she was marked not qualified for the position of Police Administrative Aide because of failure to meet educational requirements. Plaintiff was not given a hearing.

(8) On November 12, 1974, plaintiff filed an appeal with defendant CIVIL SERVICE COMMISSION. By notice dated February 26, 1975, the Civil Service Commission advised plaintiff that her appeal had been denied. Plaintiff was not given a hearing.

(9) At the request of the Police Department, the defendants CIVIL SERVICE COMMISSION and D'AMBROSE have consented to plaintiff being retained as a Police Administrative Aide pending the outcome of this litigation.

BASIS FOR ACTION

(10) The Constitution of the United States specifically provides that no person shall be denied the equal protection of the laws. It also provides that no person shall be subject to any dis-

COMPLAINT

crimination to his civil rights and that no person shall be deprived of life, liberty or property without due process of law.

JURISDICTION

(11) Jurisdiction is conferred upon the Court as follows:

- (a) 28 U.S.C. Section 1331 in that the damages in plaintiff exceed \$10,000.00 and the matter arises under the United States Constitution, laws and treaties;
- (b) 28 U.S.C. Section 1343 (3) (4) in that plaintiff seeks relief under 42 U.S.C. Sections 1981 and 1983, and that plaintiff alleges deprivation under color of state laws, of rights, privileges or immunities secured by the Constitution of the United States or by Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States;
- (c) Sections 1361 and 1391, Title 28, U.S.C., and

COMPLAINT

(d) Plaintiff's action for declaratory and injunctive relief and for damages is authorized by:

- 1) 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments;
- 2) 42 U.S.C. Section 1983 which provides redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

STATEMENT OF FACTS

(12) Plaintiff was born in Paris, France.

In June of 1957, after successfully completing eight years of continuous schooling at ECOLE-PRIVEE DE FILLES, a Parochial school in Paris, France, plaintiff was graduated and received her Diploma. Plaintiff continued her studies in the same school until January of 1959.

(13) On or about the 23rd day of November, 1962, plaintiff emigrated to the United States. On the 2nd day of November, 1972, plaintiff married in the Borough of Queens, City and State of New York.

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(14) On or about December 20, 1972, defendant CIVIL SERVICE COMMISSION duly announced an open competitive written examination for the position of POLICE ADMINISTRATIVE AIDE. Annexed herewith and marked Schedule "A" is a copy of this announcement.

(15) Plaintiff filed a written application to compete in said examination. Annexed herewith and marked Schedule "B" is a copy of plaintiff's Diploma. Schedule "C" is an English translation made by plaintiff.

(16) Plaintiff stated that the courses which she completed in said Parochial School in Paris, France, and the Certificate of Graduation which she received upon graduation were equivalent to a High School diploma.

(17) That in the civil service announcement for the examination, the following statement appeared:

"The experience papers of passing candidates only will be evaluated."

The announcement also provided that for a high school equivalency diploma, the following would be required:

"A score of at least 35 on each of the five tests and an overall

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score of at least 225 in the examination for the diploma or certificate."

(18) Plaintiff passed the written examination. The defendants having rated plaintiff as qualified, graded her examination papers and plaintiff received a grade of 86.300%.

(19) Prior to April 30, 1972, vacancies having arisen in the Police Department for the position of POLICE ADMINISTRATIVE AIDE, the POLICE DEPARTMENT requested defendant DEPARTMENT OF PERSONNEL, CIVIL SERVICE COMMISSION, to certify the names of candidates from the eligible list who were qualified and possessed the requirements for probationary appointment to said position.

(20) Respondent CIVIL SERVICE COMMISSION marked plaintiff eligible and certified her name to the POLICE DEPARTMENT as eligible and qualified for appointment from the list. On April 30, 1973, plaintiff was duly appointed from the eligible list and was required to serve a probationary period of six months which expired on October 29, 1973.

(21) Prior to the expiration of her probationary period, plaintiff was rated and evaluated as a probationer on several occasions and received outstanding and superior ratings.

COMPLAINT

Schedules "D" and "E" are copies thereof.

Schedules "F" and "G" are evaluations made of plaintiff subsequent to her probationary period.

(22) Thereafter, plaintiff was advised by the CIVIL SERVICE COMMISSION and the POLICE DEPARTMENT to take the high school equivalency test conducted by the New York State Education Department. Plaintiff took said test on March 26, 1974 and received an overall score of 276 (51 points more than required). Schedule "H" is a copy of the score. Schedule "I" is a copy of the High School Equivalency Diploma issued by the State of New York.

(23) By notice dated November 6, 1974, defendant D'AMBROSE advised plaintiff she was marked not qualified for the position of Police Administrative Aide because of "failure to meet educational requirements." Plaintiff was not accorded a hearing. Schedule "J" is a copy of said notice. By letter dated November 12, 1974, plaintiff appealed to defendant CIVIL SERVICE COMMISSION.

(24) By letter dated November 12, 1974, the Administrative Lieutenant of the 62nd Police Precinct wherein plaintiff is assigned,

COMPLAINT

objected to the proposed termination of plaintiff. The Commanding Officer concurred in the protest. Schedule "K" is a copy. Police Sergeant ANTHONY MARRA, the 62nd Police Precinct Investigating Supervisor, also protected the adverse determination made by defendant D'AMBROSE. Schedule "L" is a copy.

(25) By letter dated January 6, 1975, defendant CIVIL SERVICE COMMISSION advised plaintiff she was "not entitled to make an oral appeal" but could submit "written statements". Schedule "M" is a copy of said letter. Thereafter, plaintiff supplemented her appeal to the COMMISSION by letter dated January 22, 1975. Schedule "M" is a copy thereof. By notice dated February 26, 1975, defendant CIVIL SERVICE COMMISSION which includes defendant ALPHONSE E. D'AMBROSE, its Personnel Director, denied plaintiff's appeal and affirmed the adverse determination of said PERSONNEL DIRECTOR. Schedule "O" is a copy thereof.

(26) Thereafter, and on or about March 4, 1975, defendant CIVIL SERVICE COMMISSION notified the Personnel Bureau of the Police Department that it had denied plaintiff's appeal and

COMPLAINT

directed the Police Department to terminate plaintiff.

(27) By letter dated April 7, 1975, Police Inspector JOHN F. RONAN, Commanding Officer, Employment Division of the Police Department, requested in view of plaintiff's "outstanding performance" that she be retained as a POLICE ADMINISTRATIVE AIDE pending the outcome of litigation. Schedule "P" is a copy. Plaintiff is still employed as a Police Administrative Aide.

(28) Prior to her appointment as a POLICE ADMINISTRATIVE AIDE as aforesaid, plaintiff fully disclosed all facts and truthfully answered all questions relating to her place of birth, schooling, educational background, qualifications, employment, etc. Defendants with full knowledge of plaintiff's schooling and educational background, etc., knowingly permitted her to compete in said examination. Defendants with full knowledge of plaintiff's educational qualifications, marked plaintiff qualified and certified her name as eligible for probationary appointment prior to April 30, 1973. Thereafter, defendants certified and appointed plaintiff from the eligible list to the position of POLICE ADMINISTRATIVE AIDE

COMPLAINT

and upon the expiration of her probationary period of employment, retained plaintiff as a permanent POLICE ADMINISTRATIVE AIDE. After October 29, 1973, defendant CIVIL SERVICE COMMISSION and defendant D'AMBROSE as the Personnel Director, certified and approved the payroll and authorized the payment of salary to plaintiff as a permanent POLICE ADMINISTRATIVE AIDE.

(29) As a POLICE ADMINISTRATIVE AIDE, plaintiff performed all of her duties, functions and responsibilities in a more than satisfactory manner and received superior and outstanding efficiency service ratings.

(30) Plaintiff has exhausted all administrative remedies and has no further administrative appeals.

FIRST CAUSE OF ACTION

(31) Plaintiff was duly appointed from an eligible list to the position of POLICE ADMINISTRATIVE AIDE, Police Department, City of New York, on April 20, 1972. The position of Police Administrative Aide is a competitive position in the classified civil service. Plaintiff was required to serve a probationary period of six months which expired on October 29, 1973. Having been retained

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beyond October 29, 1973, plaintiff acquired tenure and could not be removed without charges and without a hearing.

(32) The action of the defendant D'AMBROSE, the Personnel Director, in marking plaintiff not qualified without charges and without a hearing, was illegal and improper. The action of defendant CIVIL SERVICE COMMISSION in denying plaintiff's appeal and sustaining the action of its Personnel Director without a hearing and without charges was also illegal. As a permanent civil service employee after October 29, 1973 occupying a competitive civil service position, plaintiff had a property right to her position (VEGA v. CIVIL SERVICE COMMISSION, 385 F. Supp. 1376; BOARD OF REGENTS v. ROTH, 408 U.S. 546, and PERRY v. SINDERMAN, 408 U.S. 593). A denial of said right would be violation of her constitutional right to due process and the equal protection of the laws. Plaintiff could not be deprived of her possessory interest to this property right without a meaningful hearing (GOLDBERG v. KELLY, 397 U.S. 254, 90 S. Ct. 1011; BODDIE v. CONNECTICUT, 401 U.S. 371, and BELL v. BURSON, 402 U.S. 535).

COMPLAINT

SECOND CAUSE OF ACTION

(33) Defendants with full knowledge of plaintiff's educational background and schooling, marked her qualified and certified her name as eligible for probationary appointment as a POLICE ADMINISTRATIVE AIDE. Prior to the expiration of her probationary period of employment, defendants had the right to terminate said employment upon good and sufficient cause, etc. However, plaintiff was retained beyond the expiration of her probationary period of employment and therefore acquired tenure. There was no fraud, illegality or irregularity on the part of plaintiff.

THIRD CAUSE OF ACTION

(34) Defendant D'AMBROSE marked plaintiff not qualified on or about November 6, 1974. This was accomplished without a hearing and without charges. Plaintiff filed an appeal to the CIVIL SERVICE COMMISSION. The CIVIL SERVICE COMMISSION consists of the Commissioners and the defendant D'AMBROSE. On February 26, 1975, the CIVIL SERVICE COMMISSION without a hearing, denied plaintiff's appeal and confirmed the adverse determination made by the defendant D'AMBROSE. The vote taken by the CIVIL SERVICE COMMISSION was a nullity.

COMPLAINT

FOURTH CAUSE OF ACTION

(35) A declaratory judgment is authorized by Sections 2201 and 2202, Title 28, U.S.C., and Rule 57 of the Federal Rules of Civil Procedure.

FIFTH CAUSE OF ACTION

(36) Enter preliminary and permanent injunctions restraining defendant CIVIL SERVICE COMMISSION, CITY OF NEW YORK, and defendant ALPHONSE L. D'AMBROSE, Personnel Director, Department of Personnel, their successors in office, agents and employees from interfering with, dismissing or preventing plaintiff from performing her duties as a Police Administrative Aide, Police Department, City of New York.

(37) No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, plaintiff respectfully prays that this Court:

(a) Enter a declaratory judgment against all defendants declaring that the action of defendants CIVIL SERVICE COMMISSION, CITY OF NEW YORK, and defendant D'AMBROSE, Personnel

COMPLAINT

Director, Department of Personnel,
in marking plaintiff not qualified
for the position of Police Admini-
strative Aide and directing that
she be removed from said position
of Police Administrative Aide, to
be in violation of the Constitution
of the United States in that it
denies to plaintiff procedural due
process and the equal protection
of the laws;

- (b) Vacate, annul and set aside the
determination made by defendant
CIVIL SERVICE COMMISSION, CITY OF
NEW YORK, on February 26, 1975,
which denied plaintiff's appeal
from the adverse determination
made by defendant ALPHONSE L.
D'AMBROSE on November 6, 1974
which marked plaintiff not quali-
fied for the position of Police
Administrative Aide, Police De-
partment, City of New York;
- (c) To enjoin and restrain defendants
from terminating plaintiff from her

COMPLAINT

position of Police Administrative
Aide, Police Department, City of
New York;

- (d) In the event plaintiff is removed and dismissed from her position prior to a determination herein, that this Court issue a writ of mandamus directing defendants to reinstate plaintiff to her quondam position of Police Administrative Aide, Police Department, City of New York, retroactive to the date of her dismissal with back pay;
- (e) Award damages in the sum of \$50,000.00 against those defendants who conspired and did deprive plaintiff of her constitutional and civil rights;
- (f) That this Court retain jurisdiction of this action until such time as defendants comply with the provisions of the Fourteenth and Fifth Amendments and the statutes enumerated above, and

20a

COMPLAINT

(g) That this Court grant such other and
further relief as may be proper.

DATED: New York, May 1, 1975.

Respectfully submitted,

/s/

SAMUEL RESNICOFF
Attorney for Plaintiff
Office & P.O. Address
280 Broadway
New York, N.Y. 10007

DIGBY 9-3896

EXHIBIT A - NOTICE OF EXAMINATION

OFFICIAL
12.20.72 - 8927
#10144

NOTICE OF EXAMINATION

Amended Notice

(December 22, 1972)

NO. 2251

POLICE ADMINISTRATIVE AIDE

Candidates appointed to this position will be required to work rotating tours or shifts including nights and Saturdays, Sundays and holidays.

Time in service as a Police Administrative Aide shall not be considered as service in the uniformed force for pension or retirement purposes, nor in computing seniority in a promotion examination nor in granting advancement in grade as a Patrolman or Policewoman.

SALARY: The appointment rate for this position is \$7,900 per annum.

APPLICATIONS: Received from December 1, 1972 to December 29, 1972.

DATE OF TEST: The written test is expected to be held February 3, 1973. This date is tentative only and may be changed if circumstances so demand.

PROMOTION OPPORTUNITIES: Employees in the title of Police Administrative Aide are accorded promotion opportunities, when eligible, to the title of Senior Police Administrative Aide.

MINIMUM REQUIREMENTS: High school graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate; and either two years of paid full-time clerical experience, or two years of active military duty, or one year of full-time study (30 credits) in an accredited college or university, or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of all candidates.

The period of actual attendance in an approved public service career training (M.C.D.A.) program may be credited on a month-for-month basis toward the required two years of clerical experience.

The minimum requirements must be met by the last date for the receipt of applications.

All candidates who file applications will be summoned for the written test prior to the determination of whether they meet the minimum requirements. The experience papers of passing candidates only will be evaluated.

Form 3 experience paper must be filed with the application.

DUTIES AND RESPONSIBILITIES: In the Police Department, under supervision, with some latitude for independent action, initiative or decision, performs responsible and difficult clerical and typing tasks or performs administrative work of moderate difficulty involving the handling of classified information and material; performs related work.

EXAMPLES OF TYPICAL TASKS: Performs responsible clerical and typing work in a police station or other department unit, command, or office of the Police Department; receives from, and communicates information to, the public, members of the Police Department, or other agencies; receives, revises, selects or abstracts data; prepares and types reports; obtains from, and transmits information to the public or other members of the Police Department either in person, by telephone, by radio or by other means; may handle equipment and supplies, operate various business machines, telephone switchboards, radio and other electronic equipment.

22A
EXHIBIT A - NOTICE OF EXAMINATION

TESTS: Written, weight 100, 70% required.

The written test will be of the multiple-choice type and may consist of questions on job related situations (including office practices), clerical accuracy, arithmetic and understanding of charts, understanding of reading passages, and other related areas.

Eligibles on this list may be selectively certified on the basis of possession of typing skills.

The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this notice.

CITY CIVIL SERVICE COMMISSION: Harry I. Bronstein, Chairman; George Henry, Jr., Secretary.

LAST

APPLICATION: 12/27/72

Note date of ~~exam~~, 1972. Applicant must have had a High School Diploma prior to that date.

SCHEDULE "A" (P2)

EXHIBIT B - PLAINTIFF'S DIPLOMA FROM SCHOOL
IN PARIS

William C-5135

ÉCOLE PRIVÉE DE FILLES
SAINTE-MARIE

49, rue Bobillot - 75013 PARIS

331-02-13

Je soussignée, directrice de l'École
 Sainte-Marie de Filles, 49 rue Bobillot Paris 13^e
 certifie sur l'honneur que
 Madame Anne LEGOFF Annick
 née le 10/5/43 a été reçue
 au C.E.P. Certificat d'Étude Supérieure
 en 1957.

Fait à Paris le 6.11.73.

Signature:

ÉCOLE PRIVÉE DE FILLES
49, RUE BOBILLOT
PARIS

SCHEDULE "B"

SCHEDULE "B"

EXHIBIT C - ENGLISH TRANSLATION OF DIPLOMA
(EXHIBIT B)TRANSLATION OF DIPLOMA - (Schedule "B")

"I, the undersigned, Principal of Private School
for Girls, 49 Rue Bobillot, Paris 13, certify on
my honor that Miss Annick Legoff, born on 10.3.43
graduated to CEP (Certificat d'Etudes Primaires)
in 1957.

Above made in Paris on June 11, 1973.*

SCHEDULE "C"

EXHIBIT D - PERFORMANCE RATING REPORT

PERFORMANCE RATING REPORT
— CIVILIAN PERSONNELCITY OF NEW YORK
POLICE DEPARTMENTRATING PERIOD: APRIL 1, 19⁷³ TO MARCH 31, 19⁷⁴

Last Name Berns	First Name Annick	M. I. None	Civil Service Title Police Adm. Aide	Commissioned 62nd Pct	Supervisor Lt. Joseph P. Flanagan	
MAJOR TASKS OR RESPONSIBILITIES: (List up to two additional)						
Clerical						
Performance Rating:		Two 100% months ending Sept. 30, 1973				
		June 30, 1973	August 30, 1973			
		Four 100% months ending Sept. 30, 1973				
68 Pct FIRST PERIOD						
* RATING FACTORS Indicate by check mark (✓) * If rated other than satisfactory, substitute on other side.		UNSATISFACTORY below average	FAIR needs to improve	SATISFACTORY average	SUPERIOR above average	
					OUTSTANDING	
SECOND PERIOD						
		UNSATISFACTORY below average	FAIR needs to improve	SATISFACTORY average	SUPERIOR above average	
					OUTSTANDING	
JOB PERFORMANCE Quality and quantity of work produced						
COOPERATION With fellow employees and supervisors						
DEPENDABILITY Reliable — accepts responsibility						
PUNCTUALITY — ATTENDANCE Promptness — conscientism						
RESOURCEFULNESS Copes with unusual situations						
SUPERVISORY ABILITY (If applicable) Leadership potential						
OVER-ALL EVALUATION A comprehensive appraisal, consistent with ratings of individual factors						
(Check one box Only)						
<small>NOTE: All areas should be covered. The various responsibilities imposed upon you to exert objectivity, fairly and without prejudice. Consider each factor carefully for every position.</small>						
SCHEDULE "D" (P. 1)						

Enrich Berns *Lt. Joseph P. Flanagan*
 Employee's Signature
 Date 8/30/73 Supervisor's Signature
 Date 8/30/73

EXHIBIT D - PERFORMANCE RATING REPORT
EXPLANATION FOR OTHER THAN SATISFACTORY RATING CLASSIFICATION

June
Period Ending September 30, 1973

Evaluation Assigned

Employee's Signature

Mgr's Signature

August 30,
Period Ending ~~September 30, 1973~~

Evaluation Assigned

Saperow

an effective and resourceful worker

Wm. D. Davis

Employee's Signature

R. Joseph P. Flanagan

Supervisor's Signature

SCHEDULE "D" (P. 2)

EXHIBIT E - PERFORMANCE RATING REPORT



POLICE DEPARTMENT
NEW YORK, N.Y. 10012

REPORT UNDER
PERS. BUR. MEMO
#37-1

September 14, 1973

From: Commanding Officer, 62nd Precinct.
To: Career Development Division, Performance Evaluation Section.
Subject: 4 MONTH EVALUATION OF PROBATIONER, P.... ATTICK BURNS.

Appointment date - 4/30/73
Expiration of
Probationary Period - 10/30/73

1. DIMENSION	OUTSTANDING	SATISFACTORY	MARGINAL	UNSATISFACTORY
a. Job Performance	XXX			
b. Cooperation		XXX		
c. Dependability	XXX			
d. Punctuality/ Attendance	XXX			
e. Resourcefulness	XXX			
2. Number days sick - 1				
3. Number days absent without pay - 1				
4. Recommendation: Retention				

John J. D'Amato
BOROUGH OF MANHATTAN

EXHIBIT F - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD

PERFORMANCE EVALUATION — CIVILIAN PERSONNEL					PD 439-152 (Rev. 5-73)
	SURNAME	FIR.	M.I.	TITLE	COMMAND
2.	Borms	Annick	M.	P.A.A.A.	62nd Inf.
	SOCIAL SECURITY NUMBER	EMPLOYEE NUMBER			DATE ASSIGNED TO COMMAND
	526-62-6177	604928			7/26/73
	PRESENT ASSIGNMENT				DATE OF PRESENT ASSIGNMENT
	Clerical				9/10/73
2.	ANNUAL (<input checked="" type="checkbox"/>)	INTERIM (<input type="checkbox"/>)			PROBATION (<input type="checkbox"/>) TRANSFER (<input type="checkbox"/>)
OVERALL EVALUATION					
Should be consistent with the pattern of rating on the interior of the form. A member's overall rating should not be affected by his/her relative standing in the group.					
3.	WELL ABOVE STANDARDS <input type="checkbox"/>	ABOVE STANDARDS <input checked="" type="checkbox"/>	MEETS STANDARDS <input type="checkbox"/>	BELOW STANDARDS <input type="checkbox"/>	WELL BELOW STANDARDS <input type="checkbox"/>
RECOMMENDATION					
Remember that recommendations for assignment are subject to accountability standards.					
4.	CONTINUE IN PRESENT ASSIGNMENT (<input checked="" type="checkbox"/>)	Specify _____			
	GREATER RESPONSIBILITY (<input type="checkbox"/>)	Specify _____			
	LESSER RESPONSIBILITY (<input type="checkbox"/>)	Specify _____			
	TRANSFER (<input type="checkbox"/>)	Specify _____			
	ADDITIONAL TRAINING (<input type="checkbox"/>)	Specify _____			
	OTHER (<input type="checkbox"/>)	Specify _____			
5.	RATEE COMMENTS — Indicate your general assessment of the individual's overall performance. This should reflect the standards on the interior of the form, which are derived from the specific dimensions in the Evaluation Guide. Include comments as to strengths, weaknesses and career potential.				
	<p>Peter is an efficient Civil Service worker. He is a conscientious and reliable worker. Peter works steadily, purposefully and intelligently.</p>				
	<p>I have shown this performance evaluation to the ratee and have fully discussed its contents. _____</p>				
	RATER'S INITIALS				
	<p>I wish to appeal this performance evaluation. _____</p>				
	RATEE'S INITIALS				
6.	Name (typed) Joseph P. Flanagan	Title/Rank M2, Lt.	Command 62nd Inf.	Date Assigned to Command 11/29/67	
	Peter Signature <i>Joseph P. Flanagan</i>	Tax-Employee Number 819465		Social Security Number 124-01-7088	
7.	Name (typed) Robert L. Dannerlein	Title/Rank Capt	Command 62nd Inf.	Date Assigned to Command 10/28/72	
	Reviewer Signature <i>Robert L. Dannerlein</i>	Tax-Employee Number 826571		Social Security Number 062-14-3026	
REVIEWER: Comments and recommendations.					
8.					

SCHEDULE "F" (P.1)

**EXHIBIT F - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD**

STANDARDS

ADAPTABILITY

Can this individual perform assigned tasks capably? Is this individual able to adjust to a changing work situation?

APPEARANCE

Consider the impression this individual makes on people by his/her personal neatness, hygiene, dress and bearing. Is this person physically fit?

ATTITUDE

Consider the extent to which this individual supports the programs and policies of the Department and the procedural guidelines of his/her superiors. Consider this individual's attitude toward his/her work.

COMMUNICATION SKILLS

Consider the effectiveness of his/her oral expression. Is this individual an attentive listener? Does this person possess the basic writing skills?

DEPENDABILITY

Is this person a steady performer? Does this individual require intense supervision? Consider this individual's punctuality and attendance records.

ETHICS

Consider the extent to which this individual can be relied upon to adhere to the Department's policy on ethics as expressed in guidelines.

HUMAN RELATIONS — IMPARTIALITY

Is this individual friendly, tactful and empathetic to people regardless of ethnic, religious, racial or cultural background?

JOB KNOWLEDGE

Consider how thoroughly this person knows the job to which he/she is presently assigned.

JUDGEMENT — DECISION MAKING

Are all available factors weighed before judgements are made? Are decisions based on a correct assessment of available facts?

SERVICE-ORIENTED

Is this person concerned with giving service to the public? Does this individual promote good community relations at the point of public contact?

WORK ANALYSIS

Consider this individual's work output in conjunction with the quality and complexity of his/her work.

EXHIBIT F - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD

WELL ABOVE STANDARDS	ABOVE STANDARDS	MEETS STANDARDS	BELOW STANDARDS	WELL BELOW STANDARDS
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Readily performs varied clerical & administrative tasks.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Makes a positive impression</i>				
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Ratee has a positive attitude toward her work, maintains a constant correct attitude toward co-workers.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has a good facility of expression.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Very reliable.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Department maintains a good sense of efficiency.</i>				
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has a sincere interest in people and strives to help them.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Has grasped intricacies of an assignment quickly. (Present client investigation Committee)</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Makes sound decisions in the function of administrative and technical investigations.</i>				
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Ratee renders quick and efficient service to the public.</i>				
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Work is of superior quality.</i>				

EXHIBIT G - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD

PERFORMANCE EVALUATION — CIVILIAN PERSONNEL				PD 439-152 (Rev. 9-73)
1. SURNAME Amick		FIRST A , M.I. M.	TITLE P.A.A.	COMMAND 62nd Pct
SOCIAL SECURITY NUMBER 123-32-6173		EMPLOYEE NUMBER 604929		DATE ASSIGNED TO COMMAND 7/26/73
PRESENT ASSIGNMENT Clerical - P.I.U.				DATE OF PRESENT ASSIGNMENT 9/10/73
ANNUAL <input checked="" type="checkbox"/>		INTERIM <input type="checkbox"/>	PROBATION <input type="checkbox"/> TRANSFER <input type="checkbox"/>	
2. DATE PREPARED October 10, 1973				
OVERALL EVALUATION				
Should be consistent with the pattern of rating on the interior of the form. A member's overall rating should not be affected by his/her relative standing in the group.				
3. WELL ABOVE STANDARDS <input type="checkbox"/> ABOVE STANDARDS <input checked="" type="checkbox"/> MEETS STANDARDS <input type="checkbox"/> BELOW STANDARDS <input type="checkbox"/> WELL BELOW STANDARDS <input type="checkbox"/>				
RECOMMENDATION				
Remember that recommendations for assignment are subject to accountability standards.				
4. CONTINUE IN PRESENT ASSIGNMENT <input checked="" type="checkbox"/> Specify _____ GREATER RESPONSIBILITY <input type="checkbox"/> Specify _____ LESSER RESPONSIBILITY <input type="checkbox"/> Specify _____ TRANSFER <input type="checkbox"/> Specify _____ ADDITIONAL TRAINING <input type="checkbox"/> Specify _____ OTHER <input type="checkbox"/> Specify _____				
5. RATER COMMENTS — Indicate your general assessment of the individual's overall performance. This should reflect the standards on the interior of the form, which are derived from the specific dimensions in the Evaluation Guide. Include comments as to strengths, weaknesses, and career potential.				
<p>BAA Banya possesses and displays all the needed abilities to perform her duties in an efficient and professional manner.</p> <p>On occasion when I found it necessary to ask her to extend herself beyond what is considered to be the norm for her position she has done so in a willing and cooperative manner.</p>				
<p>I have shown this performance evaluation to the ratee and have fully discussed its contents <i>Left 7/14/73</i> <i>Initials: B.P.M.</i></p>				
<p>I wish to appeal this performance evaluation <i>Ratee's Initials: B.P.M.</i></p>				
6. Name (typed) Anthony J. Farra Title/Rank 2nd. SPC. Command 62nd Pct Date Assigned to Command 10/1/73 Rater Signature <i>Anthony J. Farra</i> Tax-Employee Number 123-32-3838 Social Security Number 123-32-3838				
7. Name (typed) William E. Setorius Title/Rank 2nd. SPC. Command 62nd Pct Date Assigned to Command 2/2/74 Reviewer Signature <i>William E. Setorius</i> Tax-Employee Number 819299 Social Security Number 103-16-1057				
8. REVIEWER: Comments and recommendations <p>Comments noted and provisinary steps been made to help ratee to improve his performance.</p> <p><i>SCHEDULE "G" (P-1)</i></p>				

EXHIBIT G - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD**STANDARDS****ADAPTABILITY**

Can this individual perform assigned tasks capably? Is this individual able to adjust to a change in work situation?

Is able to display flexibility and understanding in all work situations.

APPEARANCE

Consider the impression this individual makes on people by his/her personal neatness, hygiene, dress and bearing. Is this person physically fit?

ATTITUDE

Consider the extent to which this individual supports the programs and policies of the Department and the procedural guidelines of his/her superiors. Consider this individual's attitude toward his/her work.

COMMUNICATION SKILLS

Consider the effectiveness of his/her oral expression. Is this individual an attentive listener? Does this person possess the basic writing skills?

DEPENDABILITY

Is this person a steady performer? Does this individual require intense supervision? Consider this individual's punctuality and attendance records.

ETHICS

Consider the extent to which this individual can be relied upon to adhere to the Department's policy on ethics as expressed in guidelines.

HUMAN RELATIONS—IMPARTIALITY

Is this individual friendly, tactful and empathetic to people regardless of ethnic, religious, racial or cultural background?

JOB KNOWLEDGE

Consider how thoroughly this person knows the job to which he/she is presently assigned.

JUDGEMENT — DECISION MAKING

Are all available factors weighed before judgements are made? Are decisions based on a correct assessment of available facts?

SERVICE-ORIENTED

Is this person concerned with giving service to the public? Does this individual promote good community relations at the point of public contact?

WORK ANALYSIS

Consider this individual's work output in conjunction with the quality and complexity of his/her work.

Is able to perform all tasks assigned well.

SCHEDULE "G" (P-2)

**EXHIBIT G - EVALUATION OF PLAINTIFF SUBSEQUENT
TO PROBATIONARY PERIOD**

SCHEDULE "S" (p. 3)

EXHIBIT H - COPY OF SCORE OF TEST

THE UNIVERSITY OF THE STATE OF NEW YORK
 THE STATE EDUCATION DEPARTMENT
 HIGH SCHOOL EQUIVALENCY TESTING PROGRAM
 ALBANY, NEW YORK 12224

TRANSCRIPT OF SCORES

TESTS OF GENERAL EDUCATIONAL DEVELOPMENT
 of the
 AMERICAN COUNCIL ON EDUCATION

Annick Berns
 1461 Shore Parkway JC
 Brooklyn, NY 11214

Testing Date: 3/26/74
 031-3071

A high school equivalency diploma is issued by the New York State Education Department to any eligible candidate who obtains both a score of 35 or more on each of the Tests of General Educational Development and a total standard score of 225 or more for all five of the tests.

Test No.	Name of Test
1	Correctness and Effectiveness of Expression
2	Interpretation of Reading Materials in the Social Studies
3	Interpretation of Reading Materials in the Natural Sciences
4	Interpretation of Literary Materials
5	General Mathematical Ability

Your scores for each of the five most recently taken tests are listed below, to the right of each test number and test form. Your total score is listed under the individual scores.

Test No.	Test Form	Score
1	BA	62
2	BA	57
3	BA	56
4	BA	56
5	BA	45
Total		276

Scores satisfactory,
 diploma issued.
 Read reverse side
 of this form.

Scores satisfactory, diploma not issued. When you become fully eligible for the diploma, you should write this office requesting it.

Scores not satisfactory, diploma not issued. Attach this score report to your application when you apply for retesting. Read the reverse side of this form. We have examined both your scores listed above and your scores on these circled test forms:

H J K L EE FF GG HH AA BB SA SS SC

DET 617 (5-73-60,000)
 47167

SCHEDULE "H"

SCHEDULE "H"

EXHIBIT I - COPY OF STATE OF NEW YORK HIGH SCHOOL
EQUIVALENCY DIPLOMA

The
 University of the State of New York
 Education Department

Be it known that



ANNICK MICHELE BURNS

having satisfactorily completed the requirements prescribed by
 the Commissioner of Education is thereby entitled to this

High School Equivalency Diploma



In Witness Whereof the Regents issue this diploma
 under seal of the University at Albany in the year 1974.

Robert B. Flanagan
 President of the University
 Commissioner of Education

SCHEDULE "J"

SCHEDULE "I"

EXHIBIT J - NOTICE OF PERSONNEL DIRECTOR ACTION
DATED 11/6/74



THE CITY OF NEW YORK - DEPARTMENT OF PERSONNEL

320 Church Street - New York, N.Y. 10013

NOTICE OF PERSONNEL DIRECTOR ACTION

Ms. Annick Michele Barnes
 1461 Shore Parkway - 3C
 Brooklyn, New York 11214

File No.	74-4340	Date	11-6-74
Section	Police Administration	Examination No.	2251, List 3D, 703
		Case No.	9003

The Personnel Director has taken the action checked below in connection with your application for the above mentioned position. If you have been found NOT QUALIFIED and you have already been appointed, your department has been requested to terminate your employment.

- 1 Marked you **QUALIFIED** in investigation
- 2 GRANTED your claim for veteran preference credits
- 3 GRANTED your claim for disabled veteran preference credits
- 4 GRANTED your claim for veteran preference credits but DENIED your claim for disabled veteran preference credits for the reason shown below
- 5 DENIED your claim for veteran preference credits and for disabled veteran preference credits for the reason shown below
- 6 DENIED your claim for veteran preference credits for the reason shown below

- Marked you **NOT QUALIFIED** in:
- 7 Failure to meet educational requirements
 - 8 Failure to meet experience requirements
 - 9 Failure to meet medical requirements
 - 10 Failure to meet citizenship requirements
 - 11 Failure to meet age requirements
 - 12 Failure to meet residence requirements
 - 13

REASON FOR DENIAL OF VETERAN PREFERENCE OR DISABLED VETERAN PREFERENCE CREDITS

The decisions of the Personnel Director, under Items 4 through 13, above, may be appealed in writing to the City Civil Service Commission at the address shown above, within thirty (30) days of the date of this notification. However, no appeal from a medical disqualification will be considered unless it is accompanied by supporting medical evidence which disagrees with the determination of the Personnel Director.

NOTE RE ITEMS 14 THROUGH 19

If you have been marked not qualified for any of the reasons mentioned in Items 14 through 19, you may not appeal to the City Civil Service Commission. However, if and when you contest the reason for your disqualification, you may request reconsideration by writing to the Director of Investigation at the above address, forwarding any evidence which may be pertinent. Do Not Telephone. The Personnel Director will then reconsider your case; provided the list upon which your name appears is still in existence.

Marked you **NOT **QUALIFIED**** (See Note Re Items 14-19)

- 14 Because investigation was discontinued by your request
- 15 For failure to appear for interview as requested
- 16 For failure to appear for medical examination
- 17 For failure to appear for or to cooperate in the completion of investigation
- 18 For failure to reply to Form D9-484 A1 (Request for Supplementary Information)
- 19 For

DP-SAL-64P-530067/29

Acting City Personnel Director
 ALVIN L. DUBROVSKY

SCHEDULE "J"

SCHEDULE "J"

EXHIBIT K - LETTER FROM ADMIN. LIEUT OF 62ND PCT.,
DATED 11/12/74



POLICE DEPARTMENT
NEW YORK, N.Y. 100-8

November 12, 1974

From: Lieutenant Joseph P. Flanagan, 62 Precinct.
To: Commanding Officer, Personnel Services Division.
Subject: TERMINATION OF EMPLOYMENT OF POLICE ADMINISTRATIVE
AIDE ANNICK M. BURNS, PAY REGISTRY #604926.

1. Police Administrative Aide Annick M. Burns, Pay Registry 604926, employed in the Precinct Investigating Unit of the 62 Precinct is in receipt of a notice from the Department of Personnel that her employment is to be terminated.

The notice states that she is not qualified by reason of not meeting the qualifications in that she fails to meet the educational requirements.

2. Police Administrative Aide Burns has been employed in the 62 Precinct since July 26, 1973 until the present time, a period of sixteen months under my supervision. To hold that she is not qualified by not meeting the educational requirements is a patent absurdity.

I do not hesitate to state that she is one of the most skilled clerk/administrators that I have encountered in my time in the Police Department.

3. Mrs. Burns is very upset by this development at this time and would like the matter resolved. This is understandable and in view of her work record she deserves to have it adjudicated and resolved in her favor.

The Police Department stands to lose a very valuable employee if it is to be otherwise.

Joseph P. Flanagan
Joseph P. Flanagan
Administrative Lieutenant
62 Precinct

1ST ENDORSEMENT
November 12, 1974. From Commanding Officer, 62 Precinct, to Commanding Officer, Personnel Services Division. Above content noted, and fully concur.

William E. Sutorius
William E. Sutorius
Captain - 62 Precinct
Commanding Officer.

SCHEDULE "K"

SCHEDULE "K"

EXHIBIT L - LETTER FROM 62ND POLICE PCT. INVESTIGATING
SUPERVISOR MARRA DATED 11/12/74POLICE DEPARTMENT
NEW YORK, N.Y. 10018

November 12, 1974

From: Sergeant Anthony Marra, 62 Precinct Investigating Unit Supervisor.

To: Commanding Officer, Personnel Services Division.

Subject: TERMINATION OF EMPLOYMENT OF POLICE ADMINISTRATIVE AIDE ANNICK M. BURNS, P.M. REGISTRY #604928.

1. Police Administrative Aide Annick M. Burns, Tax Registry 604928, employed in the 62 Precinct Investigating Unit of the 62 Precinct is in receipt of a notice from the Department of personnel that her employment is to be terminated.

The notice states that she is not qualified by reason of not meeting the qualifications in that she fails to meet the educational requirements.

2. Police Administrative Aide Burns has been under my direct supervision since October 1, 1973 when she was assigned to clerical duties with the 62 Precinct Investigating Unit.

During this period Mrs. Burns has displayed all the necessary skills needed to perform her duties in an exemplary and highly efficient manner. I cannot understand how her capabilities can be questioned for a review of her work can clearly justify that she not only meets the needed requirements for the position but clearly excels beyond them.

3. The removal of Mrs. Burns from this unit and from the Police Department would in my opinion, not be justified as being beneficial to either the Police Department or the City of New York.

Looking at it in a practical vain, during Mrs. Burns' employment which is approximately two years, she has undergone training. By her removal it would take approximately another two years to train a replacement to her current level of performance.

I would request that a review of the circumstances surrounding Mrs. Burns' scholastic qualifications be reviewed so that we can prevent any injustices which may arise due to planned procedures.

Anthony Marra
Anthony Marra
Sergeant
62 P.I.U. Supervisor

SCHEDULE "L"

EXHIBIT M - LETTER FROM CIVIL SERVICE COMMISSION
DATED JANUARY 6, 1974



CITY CIVIL SERVICE COMMISSION
320 CHURCH STREET NEW YORK N.Y. 10013

January 6, 1974

ALPHONSE E. D'AMBROSE, CHAIRMAN
JAMES W. SMITH, MEMBER
JOSEPHINE L. GAMBINO, MEMBER

Ms. Annick M. Berns
1461 Shore Parkway - 3C
Brooklyn, N.Y. 11214

Dear Ms. Berns:

Your appeal to the City Civil Service Commission is hereby acknowledged. Pursuant to the Rules of the City Civil Service Commission, you are not entitled to make an oral appeal. However, the City Civil Service Commission affords you or your counsel or other persons selected by you, an opportunity to submit written statements setting forth in detail all relevant facts, data, reasons, and such other information as you deem advisable, why you believe you should be qualified for this position.

In the event that you fail to submit any additional written statements within twenty (20) days from the date of this letter, the City Civil Service Commission may deem such failure to timely to constitute your desire to rest solely on the record, including your record correspondence. In that event, a decision may be rendered by the City Civil Service Commission after review of such record and correspondence, and no later submission of written statements by you will be permitted.

Yours truly,

Nicholas LaPorte, Jr.
Secretary

SCHEDULE "M"

SCHEDULE "M"

EXHIBIT N - LETTER FROM PLAINTIFF TO CIVIL SERVICE
COMMISSION DATED JANUARY 22, 1975

REGISTRED
RETURN RECEIPT REQUESTED

1461 Shore Parkway - 3C
Brooklyn, N.Y. 11214

January 22, 1975

Mr. Nicholas LaPorte, Jr.
Secretary
The City of New York
City Civil Service Commission
220 Church Street,
New York, N.Y. 10013

Dear Mister LaPorte:

This will acknowledge receipt of your letter dated January 6, 1975 in which you advise me that I do not have the right to an oral appeal.

As part of my appeal, I would like to submit the following: When I took Civil Service Exam #2251 for the position of Police Administrative Aide, I was certain that the documents I had from my educational institutions in France, where I attended school, were adequate proof of my having a High School Education. These documents were accepted by the Department of Personnel and the Investigation Bureau of the Police Department.

Approximately six (6) months later, I was requested by the Department of Personnel and the Investigation Bureau of the Police Department, to take the U.S. High School Equivalency Exam, which I immediately took, and submitted this certificate to both these offices.

I am enclosing herewith, letters of recommendations from several supervisors, performance evaluations given to me over the past two (2) years, a copy of transcript of college credits received from the New York Institute of Finance which I attended while working on Wall Street

SCHEDULE "N" (P.I.)

EXHIBIT N - LETTER FROM PLAINTIFF TO CIVIL SERVICE
COMMISSION DATED JANUARY 22, 1975

I would also like to point out that I was born and raised in France, therefore English is a second language to me. I learned and mastered English in a period of three (3) years, from the age of 11 to 14, which was taught to me in my French School, this alone should show the high degree of the french educational system. I also took the last promotion test to Administrative Assistant in which I received a score in the mid-eighties.

I hope that in reviewing all these facts you will come to a favorable decision so that I may continue in my present capacity. I feel that I have been a most deserving employee, and let the record show that I have been a dedicated, trustworthy and most diligent employee serving the people of the City of New York.

Respectfully,

Annick Perny

Mrs. Annick Perny
1461 Shore Parkway
Brooklyn, N.Y. 11214

AB

SCHEDULE "N" (p. 2)

SCHEDULE "N"

EXHIBIT O - NOTICE FROM CIVIL SERVICE COMMISSION
TO DEFENDANT DATED FEBRUARY 26, 1975



THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION
220 Church Street - New York, N.Y. 10013

NOTICE OF CITY CIVIL SERVICE COMMISSION ACTION

ITEM NO.	DATE
C-75-743	2.26.75
LIST NO.	APPL. NO.
705	
EXAMINATION NO.	
2251	
TITLE	
Police Administrative Aide	

Ms. Annick M. Berns
1461 Shore Parkway - 3C
Brooklyn, New York 11214

The City Civil Service Commission has taken the action indicated by the checked box below in connection with your eligibility for the title indicated above.

- 1. GRANTED your appeal and marked you QUALIFIED
- 2. GRANTED your claim for veteran's preference.
- 3. GRANTED your claim for disabled veteran's preference.
- 4. Marked you QUALIFIED, assigned a grade of _____ and placed your name on the eligible list.
- 5. DENIED your claim for veteran's preference because _____
- 6. DENIED your request for re-examination form _____
- 7. DENIED your appeal on your disqualification for the above position.
- 8. GRANTED your request for a hearing before it. The hearing will be held in the Board Room, Room 400, 220 Church Street on: _____ Please be prompt, and be prepared to submit oral arguments in connection with your appeal. You may, if you wish, have an attorney or other person represent you at this appeal hearing, but in any event, you must be present. In the event you fail to appear promptly at the stated time, the City Civil Service Commission may deem such non-appearance to constitute your desire to rest solely on the papers already contained in your personal history file. In that event, a decision may be rendered by the City Civil Service Commission after a review of such file and no later appearance will be permitted.
- 9. GRANTED your appeal on qualifying experience
- 10. _____

cc: Administrative Services
 Investigations Bureau
 Examining Service Division
 Medical and Physical Examining Division
 Examining Division
 Recruitment & Community Programs
 File

Nicholas LaPorte, Jr.
Secretary

DP-23

SCHEDULE "O"

271

SCHEDULE "O"

EXHIBIT P - LETTER FROM COMMANDING OFFICER, EMPLOYMENT DIVISION, POLICE DEPT., DATED APRIL 9, 1975



POLICE DEPARTMENT
NEW YORK, N.Y. 10028

April 9, 1975

Mr. Charles Hoy, Jr.
Assistant Personnel Director
New York City Department of Personnel
220 Church Street
New York, N.Y. 10013

Re: Annick M. Berne
Police Administrative Aide
Exam. No. 2261
List No. 705
Item No. J-72-743

Dear Mr. Hoy:

On March 4, 1975, the Personnel Bureau of the New York Police Department received notification of the Civil Service Commission's denial of an appeal instituted by Annick M. Berne, Police Administrative Aide employed by our Department.

Mrs. Berne was appointed to her position on April 10, 1973. In a notice dated November 5, 1974, the Police Department was notified to terminate Mrs. Berne's employment due to her failure to meet the educational requirements of her title. Since that date the following events relating to this matter have taken place:

a. On November 12, 1974, Mrs. Berne notified the Civil Service Commission of her intention to appeal this decision.

b. On November 13, 1974, Captain William P. Rose, Commanding Officer, Captain Rose's Bureau, requested that the scheduled termination of Mrs. Berne's employment be held in abeyance pending the disposition of her appeal. Captain Rose's request was made on the basis of Mrs. Berne's outstanding performance since her appointment to the Police Department. Departmental Performance Evaluation Reports and personal commendatory letters attest to her exemplary record.

c. Mrs. Berne's request for an oral appeal before the Civil Service Commission was denied in a letter dated January 6, 1975.

d. On January 16, 1975, Mrs. Berne submitted a written appeal in her own behalf.

e. In a notice dated February 26, 1975, Mrs. Berne was informed by the decision of the Civil Service Commission to deny her appeal.

SCHEDULE "P"

EXHIBIT P - LETTER FROM COMMANDING OFFICER, EMPLOYMENT DIVISION, POLICE DEPT., DATED APRIL 9, 1975

- 2 -

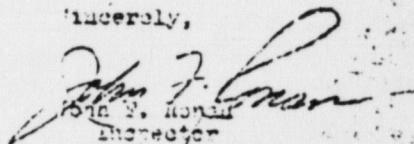
f. On March 5, 1975, Mrs. Berns retained Attorney Samuel Resnicoff of 280 Broadway, Manhattan to represent her in this matter.

g. On May 1, 1975, Mr. Resnicoff will file a brief for an order to show cause before the Supreme Court of the State of New York, pursuant to Article 78 C.P.L.R.

Since Mrs. Berns' educational qualifications are to be subject to court review it is requested that any personnel decision concerning termination of her services be ordered only after the resolution of this matter in court. It is evident that the request to terminate her services was made without knowledge that this matter was to be pursued further. Based on this consideration it appears only reasonable to continue her employment at this time.

I have conferred with Captain Done of the Career Development Division, and he has confirmed his earlier evaluation of Mrs. Berns' outstanding performance.

Yours sincerely,


John V. Moran
Commanding Officer
Employment Division

JJ

DETACHMENT "A" (4)

SCHEDULE APP

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Caption Omitted)

The Defendants, by their attorney W.
BERNARD RICHLAND, Corporation Counsel of the City
of New York, answering the complaint herein.

1. Deny each and every allegation con-
tained in paragraph "2" of the complaint except
the Court is respectfully referred to the Notice
of Examination, as issued, without additions, sub-
mitted as Defendants' Exhibit "1".

2. Deny any knowledge or information
sufficient to form a belief as to the truth of
each and every allegation contained in paragrap'
"3" of the complaint except deny the allegation
contained therein that attached to plaintiff's
application was her diploma from Ecole Privee
De Filles Saint-Marie, as no diploma or what con-
tained in plaintiff's schedules "B" or "C" was
attached to plaintiff's application and further
deny that the submission, on the date of the
application, of evidence to substantiate the
educational requirements was called for in said

ANSWER

application, and the Court is respectfully referred to Defendants' Exhibit "1" and Plaintiff's Schedule "A", which indicate that the last date of filing applications to take the examination was December 29, 1972 and plaintiff's alleged diploma (Schedule "B", allegedly translated in Schedule "C") which was dated June 11, 1973, more than five (5) months after the date Plaintiff submitted her application and that plaintiff could not have attached to her application an alleged diploma made more than five (5) months after filing the application.

3. Deny each and every allegation contained in paragraph "4" of the complaint except admit that plaintiff Annich M. Berns also known as Annick Shaw, Annick Hunter and Anick Legoff (Defendants' Exhibit "2") took Civil Service Examination No. 2251, Police Administrative Aide, Application No. 02617 passed the written part only, her name was placed on the eligible list No. 705 and was appointed effective April 30, 1973, subject to investigation as indicated in Defendants' Exhibit "3" and a final determination of her qualification (Defendants' Exhibit "4").

4. Deny each and every allegation contained in paragraph "5" of the complaint except admit that plaintiff's appointment, which was

ANSWER

subject to investigation, commenced with six months probationary period.

5. Deny the allegation contained in paragraph "6" of the complaint that plaintiff "was retained as a Police Administrative Aide," but admit that plaintiff's employment was continued subject to investigation pursuant to the provision in Defendants' Exhibit "4" and further deny the relevance of each and every allegation contained in said paragraph "6" of the complaint to the issue of revocation of plaintiff's conditional certification upon her qualification at the investigation for failure to meet the educational requirements on the last day of the receipt of applications, namely December 29, 1972 as was required of all candidates.

6. Deny the allegation or the implication thereof contained in paragraphs "7" and "8" of the complaint that plaintiff may have been entitled to a hearing before her certification was revoked or when her administrative appeal was considered by the Civil Service Commission and the Court is respectfully referred to Defendants' Exhibit "5".

7. Deny the relevance or the applica-

ANSWER

tion of each and every allegation contained in paragraph "10" of the complaint to this case.

8. Deny each and every allegation contained in paragraph "11" of the complaint.

9. Deny any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "12" of the complaint except admit that in the course of her investigation plaintiff submitted as proof of her education schedules "B" and "C" which purport to be evidence toward her study for "certificat d' Etude Primairee in 1957, having been born on 10/3/43.

10. Deny any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "13" of the complaint.

11. Deny each and every allegation contained in paragraph "15" of the complaint except admit that some time between December 1, 1972 and December 29, 1972 plaintiff filed a written application to compete in the examination in issue and the Court is respectfully referred to plaintiff's schedules "B" and "C" dated June 11, 1973 which

ANSWER

could not have been attached to her application filed more than five months prior to the date of the alleged diploma.

12. Deny each and every allegation contained in paragraph "16" of the complaint except admit that plaintiff filed her application to take the examination in issue some time from December 1, 1972 and no later than December 29, 1972 (Defendants' Exhibit "1") on which she specifically stated that she graduated from High School and in addition had one year of college and at time of application she was in the process of finishing Financial School (Defendants' Exhibit "3"), and that after her investigation commenced she submitted to the investigation Bureau of the Department of Personnel of the City of New York her alleged evidence of attending Ecole Privee Des Filles Sainte-Marie dated June 11, 1973 more than five months after she submitted her application to take the examination in issue and that the translation of said document submitted by plaintiff to said Bureau of Investigation states that she graduated with a "Certificat d'Etude Primaires", which is not equivalent to High School, at the alleged age of

ANSWER

(14) fourteen years of age.

13. Deny each and every allegation contained in paragraph "17" of the complaint except the Court is respectfully referred to the relevant provisions in the Notice of Examination, as issued (Defendants' Exhibit "1").

14. Deny each and every allegation contained in paragraph "18" of the complaint except admit that plaintiff passed the written part of the examination and received a grade of 86.3%.

15. Deny each and every allegation contained in paragraph "19" of the complaint except admit that the Police Department requested the certification of names on the eligible list for Administrative Aide to fill vacancies and the Department of Personnel of the City of New York issued the requested certification with the condition that each name certified was so certified subject to medical examination and investigation of qualifications.

16. Deny each and every allegation contained in paragraph "20" of the complaint except admit that plaintiff was certified to the Police Department and was appointed conditionally effective April 30, 1973 subject to investigation and

ANSWER

that said appointment, as provided by law, commenced with a probationary period and for the title of Police Administrative Aide it was six months.

17. Deny the relevance of each and every allegation contained in paragraph "21" of the complaint to the issue of plaintiff's qualification prior to appointment as set forth in the Notice of Examination (Defendants" Exhibit "1").

18. Deny any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "22" of the complaint except deny that the defendants or any of their employees has the authority to waive the educational requirements as to the plaintiff which are applicable to all candidates, as the High School Equivalency Diploma submitted by plaintiff does not meet the eligibility requirements set forth in the Notice of Examination, i.e., obtained after December 29, 1972, the last date of receipt of applications.

19. Deny the allegation or the implication thereof contained in paragraph "23" of the complaint that plaintiff may have been entitled to

50a

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a hearing.

20. Deny the relevance of each and every allegation contained in paragraph "24" of the complaint to the issue of plaintiff's meeting the minimum requirements set forth in the Notice of Examination and deny the relevance of the opinion of any employee referred to therein to the applicability of the educational requirements to the plaintiff and the Court is respectfully referred to the letter of the Assistant Chief Inspector Henry R. Morse, who is the Assistant Chief in Command of the Police Department Personnel Bureau to the Civil Service Commission (Defendants' Exhibit "6") requesting that the certification of plaintiff be revoked and her services be terminated accordingly because of plaintiff's failure to meet the educational requirements.

21. Admit the allegations contained in paragraph "25" of the complaint and the Court is respectfully referred to plaintiff's Schedule "M", a letter to plaintiff from the Civil Service Commission stating the following:

" *** the City Civil Service Commission affords you or your counsel or other persons selected

ANSWER

by you, an opportunity to submit written statements setting forth in detail all relevant facts, data, reasons, and such other information as you deem advisable, why you believe you should be qualified for this position."

(Defendants' Exhibits "5", "6", "7" and "8") and in response thereto plaintiff submitted no documentary evidence to establish that she met the educational requirements by the last date for receipt of applications.

22. Deny each and every allegation contained in paragraph "27" of the complaint except admit that plaintiff's services have not been terminated and the Court is respectfully referred to plaintiff's exhibit referred to therein.

23. Deny each and every allegation contained in paragraph "28" of the complaint except admit that plaintiff was certified and was appointed subject to investigation and that plaintiff falsely stated in her application that she graduated from high school and that she had one year of college-finishing Fiancial School (Defendants' Exhibit "3") and that as an employee appointed subject to investigation she was paid salary for her services regardless of the subsequent discovery that her statement with regard

ANSWER

to her educational qualification was incorrect.

24. Deny the relevance of the allegations contained in paragraph "29" of the complaint to plaintiff's lack of educational qualification required of all candidates which necessitated the revocation of her certification.

25. Deny each and every allegation contained in paragraph "31" of the complaint except admit that plaintiff was appointed subject to investigation to the position of Police Administrative Aide, a competitive title in the classified civil service, which appointment was void ab initio.

26. Deny each and every allegation contained in paragraph "32" of the complaint and further the Court is respectfully referred to Defendants' Exhibit "9".

27. Deny each and every allegation contained in paragraph "33" of the complaint except admit that plaintiff's employment could have been terminated earlier and that plaintiff's certification was revoked within the statutory period prescribed by the New York State Civil Service Law Section 50, para. 4.

28. Deny the allegation contained in

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paragraph "34" of the complaint that the vote taken by the Civil Service Commission was a nullity and further deny the allegation of the implication thereof contained in said paragraph that plaintiff has been entitled to a hearing.

29. Deny each and every allegation contained in paragraphs "35" and "36" of the complaint.

30. Deny any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "37" of the complaint.

AS AND FOR A FIRST DEFENSE:

31. The complaint failed to establish the jurisdiction of this Court in this action.

AS AND FOR A SECOND DEFENSE:

32. The complaint failed to establish any monetary damages under 28 U.S.C. §1331 or any other provision.

AS AND FOR A THIRD DEFENSE:

33. Assuming arguendo that plaintiff stated a cause of action, plaintiff has adequate remedy in State courts and this Court should abstain from taking jurisdiction.

ANSWER

AS AND FOR A FOURTH DEFENSE:

34. The complaint failed to state a claim upon which relief may be granted.

35. The Notice of Examination (Defendants' Exhibit "1") provided that high school graduation or evidence of having passed an examination for high school equivalency diploma is required of all candidates and that said educational requirement must be met by the last date for the receipt applications, namely, December 29, 1972.

36. Plaintiff took the examination and on her application she represented that she graduated from high school (Ste Marie-Paris) in July, 1959 and that she had one year of college (Defendants' Exhibit "3").

37. Plaintiff passed the examination, her name was placed on the eligible list, certified to the Police Department and appointed subject to her qualifications in the investigation and that failure to meet the required qualifications would result in the revocation of her certification and termination of her employment in accordance with Rule 4.7.9 of the Rules of the New York City Civil Service Commission's

ANSWER

Rules which provide as follows in pertinent part:

"Whenever, upon subsequent investigation, medical test or other qualifying test or requirement, an eligible, thus certified, is found to be not qualified, such certification shall be revoked and the employment, if any, of such eligible terminated."

Rule 4.7.6 of the Civil Service Commission provides:

"Whenever a person not entitled to certification is certified, such certification and appointment, if any, shall be revoked by the director."

38. The Rules of the Civil Service Commission "have the force and effect of law" under Section 20 of the New York State Civil Service Law.

39. New York State Civil Service Law Section 50, subd. 4 provides as follows in pertinent part:

"Notwithstanding the provisions of this subdivision or any other law, the state civil service department or appropriate municipal commission may investigate the qualification and background of an eligible after he has been appointed from the list, and upon finding facts which if known prior to appointment, would have warranted his disqualification, or upon finding of illegality, irregularity or fraud of a substantial nature in

ANSWER

his application, examination or appointment, may revoke such eligible's certification and appointment and direct that his employment be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in case of fraud."

40. After her appointment, plaintiff was called for investigation. To substantiate her alleged high school graduation by December 29, 1972, the last day applications were received, she submitted a letter dated June 11, 1973 purporting to represent that she received or graduated to "Certificat d'Etude Primaires" in 1957. As plaintiff failed to meet the minimum educational requirements she obtained a High School Equivalency Diploma, 1974 series (Plaintiff's Schedule I). Neither of the foregoing documents established graduation from high school, or having passed an examination for high school equivalency diploma by December 29, 1972.

41. Plaintiff was certified and appointed at the time when the Department of Personnel had before it plaintiff's application (Defendants' Exhibit "3") in which plaintiff represented that she graduated from high school and had one year of

ANSWER

college. After investigation and upon discovering that plaintiff failed to meet the educational requirement which she mistated, plaintiff's certification was revoked in accordance with New York State Civil Service Law Section 50, subd. 4 and the Rules quoted above.

42. Plaintiff's certification was properly revoked ab initio.

43. Plaintiff is not entitled to a hearing.

44. The defendants are bound by their own rules as well as by the foregoing statutory provision.

AS AND FOR A FIFTH DEFENSE:

45. The complaint failed to allege any fact which would substantiate a claim for damages.

46. As plaintiff alleges in paragraph "27" of her complaint, her employment has been continued pending the outcome of the litigation.

47. The demand for \$50,000 is based on no damages sustained or alleged.

48. The complaint failed to allege any fact which would substantiate a claim for damages.

49. Plaintiff's demand for the award of \$50,000 as damages in the wherefore clause is less

ANSWER

than a conclusory allegation and neither of which is sufficient to state a claim for damage.

AS AND FOR A SIXTH DEFENSE:

50. The City of New York or any of its agencies are not persons within the meaning of Title 42, U.S.C. §1983 and therefore not liable to damages.

AS AND FOR A SEVENTH DEFENSE:

51. In performing the acts herein complained of, the defendants performed their official functions in good faith and in accordance with the controlling statutes and provisions of the constitution of the State of New York and therefore are immune from damages herein.

WHEREFORE, the defendants respectfully request that the complaint be dismissed in all respects with costs and disbursements.

Dated: New York, N.Y.
May 2, 1975

W. BERNARD RICHLAND
Corporation Counsel of the
City of New York
Attorney for Defendants
Municipal Building
New York, N.Y. 10007

By REUBIN DAVID
REUBEN DAVID
Assistant Corporation Counsel

To: SAMUEL RESNICOFF, ESQ.
Attorney for Plaintiff
280 Broadway
New York, New York 10007

**EXHIBIT 1 - NOTICE OF EXAMINATION FOR POLICE
ADMINISTRATIVE AIDE**

OFFICIAL
12.22.72 - R-27
#10144

NOTICE OF EXAMINATION

Amended Notice

(December 22, 1972)

NO. 2251

POLICE ADMINISTRATIVE AIDE

Candidates appointed to this position will be required to work rotating hours or shifts including nights and Saturdays, Sundays and holidays.

Time in service as a Police Administrative Aide shall not be considered as service in the uniformed force for pension or retirement purposes, nor in computing seniority in a promotion examination nor in granting advancement in grade as a Patrolman or Policewoman.

SALARY: The appointment rate for this position is \$7,900 per annum.

APPLICATIONS: Received from December 1, 1972 to December 29, 1972.

DATE OF TEST: The written test is expected to be held February 3, 1973. This date is tentative only and may be changed if circumstances so demands.

PROMOTION OPPORTUNITIES: Employees in the title of Police Administrative Aide are accorded promotion opportunities, when eligible, to the title of Senior Police Administrative Aide.

MINIMUM REQUIREMENTS: High school graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate; and either two years of paid full-time clerical experience, or two years of active military duty, or one year of full-time study (30 credits) in an accredited college or university, or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of all candidates.

The period of actual attendance in an approved public service career training (M.C.D.A.) program may be credited on a month-for-month basis toward the required two years of clerical experience.

The minimum requirements must be met by the last date for the receipt of applications.

All candidates who file applications will be summoned for the written test prior to the determination of whether they meet the minimum requirements. The experience papers of passing candidates only will be evaluated.

Form 2 experience paper must be filed with the application.

DUTIES AND RESPONSIBILITIES: In the Police Department, under supervision, with some latitude for independent action, initiative or decision, performs responsible and difficult clerical and typing tasks or performs administrative work of moderate difficulty involving the handling of classified information and material; performs related work.

EXAMPLES OF TYPICAL TASKS: Performs responsible clerical and typing work in a police station or other department unit, command, or office of the Police Department; receives from, and communicates information to, the public, members of the Police Department, or other agencies; receives, revises, selects or abstracts data; prepares and types pertinent reports; obtains from, and transmits information to the public or other members of the Police Department either in person, by telephone, by radio or by other means; may handle equipment and supplies, operate various business machines, telephone switchboards, radio and other electronic equipment.

Defendant's Exhibit 1

EXHIBIT 1 - NOTICE OF EXAMINATION FOR POLICE
ADMINISTRATIVE AIDE

WTS: Written, weight 100, 70% required.

Written test will be of the multiple-choice type and may consist of questions job related situations (including office practices), clerical accuracy, arithmetic understanding of charts, understanding of reading passages, and other related areas.

Eligibles on this list may be selectively certified on the basis of possession of typing skills.

The pertinent sections of the General Examination Regulations and the General provisions of the Notice of Examination are also part of this notice.

CITY CIVIL SERVICE COMMISSION: Harry I. Bronstein, Chairman; George Henry, Jr., Secretary.

**EXHIBIT 2 - PERSONAL HISTORY QUESTIONNAIRE,
NATURALIZATION RECORD, EDUCATIONAL RECORD,
EMPLOYMENT RECORD, LICENSES, COURT RECORD,
SOCIAL STATE, RESIDENCE**

The City of New York
DEPARTMENT OF PERSONNEL
220 Church Street, New York, N. Y. 10013
PERSONAL HISTORY QUESTIONNAIRE

Form A

INSTRUCTIONS: Every question on this personal history sheet must be fully and frankly answered. Typewrite your answers or print them in ink. The truth or falsity of the answers made will be ascertained by investigation. A material false statement willfully and fraudulently made by an applicant will automatically cause his disqualification and may cause prosecution.

TITLE OF LIST

EXAM NO.	GROUP NO.	APPL. NO.	LIST NO.
1161		11617	705
APPOINTED DATE GIVEN:	4 3 73	DEPARTMENT	NYPD
DID YOU CLAIM VETERAN PREFERENCE CREDITS FOR THIS POSITION?			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
DID YOU CLAIM DISABLED VETERAN PREFERENCE CREDITS FOR THIS POSITION?			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
FULL NAME	First	Middle	Last
SHAW Annick Michele Berns			
BERNS ANNICK MICHELE			
PRESENT ADDRESS	1461 SHORE PARKWAY - 3C		
Give full address including Zip Code	Brooklyn, N.Y. 11214		

PRINT ANSWERS ("YES" OR "NO") IN ANSWER BOXES

1. Are you a citizen of the United States?

Answer	YES
Answer	NO

2. Were you ever investigated by the Department of Personnel, the Police Academy or any other City agency? (If "Yes", state position in Section 30, Page 4.)

Answer	NO
--------	----

3. Have you ever served in the armed forces of the U. S.?

Answer	NO
--------	----

If ever in the Armed Forces, were you ever tried and found guilty in a court martial proceeding? (If "Yes", give details in Section 30, Page 4.)

Answer	NO
--------	----

4. Were you ever classified AF or 1Y? (If "Yes", give reason and number and address of local Board in Section 30, Page 4.)

Answer	NO
--------	----

5. Were you at any time after January 1, 1951 permanently appointed or promoted to a position in the service of any City, County, or Board of Education in the State, or in the State service as a result of Veteran Preference Credits? (If "Yes", give details in Section 30, Page 4.)

Answer	NO
--------	----

21. BIRTH RECORD (As appears on certificate). If Birth Record is unobtainable, submit a Federal Census Record or other proof.

Name ANNICK MICHELE LE GOFF Date of Birth 10/3/43 Father's Name LE GOFF, RENE Mother's Maiden Name QUEMEL JACQUELINE	Place of Birth PARIS / FRANCE Certificate No. 176204 Date Filed or Recorded Name of issuing agency Address of issuing agency	DO NOT WRITE IN THIS BOX Birth Record Verified New See P. 4 Investigator
---	--	--

* The New York Law Against Discrimination prohibits discrimination because of age or sex, except where there is a bona fide occupational qualification or a statutory authorization.

P-226-204-508048 (72) 400-871

Defendant's Exhibit "2"

EXHIBIT 2 - PERSONAL HISTORY QUESTIONNAIRE

Page 2

22. NATURALIZATION RECORD (For foreign-born only)

Name on Certificate	ANNICK MICHELE SHAW		Certificate Issued To	<input checked="" type="checkbox"/> SELF <input type="checkbox"/> PARENT <input type="checkbox"/> HUSBAND	
Age on Certificate	27	Certificate Number	728185	Date Issued	2/9/71
Names and Ages of Wife and Children					
LISA MICHELE SHAW (5) DAUGHTER					
Court Issued By		Location of Court BROOKLYN			

DO NOT WRITE IN THIS BOX
Not Record Certified

See P. 4
Investigator

23. EDUCATIONAL RECORD (List All Schools. Do not omit any. If you have a high school equivalency certificate, indicate year issued and certificate number.)

Schools and Colleges Attended	Address	Dates Attended (Month & Year) From / To	Day or Night	Highest Class Completed	Diploma or Degree
A. ST LERERBOURS	BLD BLAISE PARIS	7/69 17/53	DAY	11th GR	-
B. STE MARIE	RUE ROBILLOT PARIS	6/53 7/61	DAY	12th	H.S.
C. ECOLE D'HOTESS. DE PARIS	BLD DES CAPUCINES PARIS	7/61 10/61	DAY	-	HOSTESS
D. N.Y. INSTITUTE OF FINANCIAL	WALL ST. N.Y. - N.Y.	68/69	DAY/NIGHT	-	ACCT. STOKE BLD.
E. KREE INSTITUTE	152 1/2 UPTON ST N.Y.	9/72 2/73	DAY	ELECTROLOGIST	

DO NOT WRITE IN THIS BOX
Education Ver.
 Now
 =
 Not Recd.
See P. 4
Investigator

24. EMPLOYMENT RECORD State every one of your occupations and employment. Do not omit any. Start with your present employment and work back to the time you left school. For each period that you were unemployed, give the dates of the period of unemployment and state how you supported yourself.

SOCIAL SECURITY NUMBER
52816216177

Dates (Mo. & Yr.)	Occupation	Name of Employer	Present Address of Employer	Immediate Supervisor (also your Badge No.)
From	To			
3/73 present	ELECTRAWHIST	LORD & TAYLOR	EASTCHESTER, N.Y.	-
10/71 10/72	MINER	ANNICK'S BOUTIQUE	1 MY PLAZA, N.Y.	-
11/70 9/71	SECRETARY	LAIRD, INC	140 BROADWAY	R.M. DEWEY
8/70 11/70	SECRETARY	ADAMS & PECK	120 BROADWAY	JIM HALE
5/68 8/69	SECRETARY	GEO A. ROGERS & CO.	120 BROADWAY	G.A. ROGERS
11/67 5/68	RECEPTIONIST	EMANUEL DEETZEN	120 BROADWAY	R. FALLOH
3/67 7/67	SECRETARY	WESTERN MICROWAVE	SANTA CLARA, CALIF.	P. ENGLISH
7/66 10/66	STATISTICAL TYPIST	CALIF TEST BUREAU	MONTEREY, CALIF.	J. BELL
7/64 3/65	PERSONNEL SECRETARY	MARINE CORPS TECH.	29 PALMS USMC CALIF	CAPT. SCALDOR
10/61 10/62	PERSONNEL SECRETARY	AFFEX - EXCHANGE	EVREUX - FFB FRANCE	H.J. SELTMACH
3/66 6/66	SECRETARY	WILDER & JONES	SEASIDE, CALIF.	PAUL FURGE

DO NOT WRITE IN THIS COLUMN + Verifier

NOTE: If you need more space, attach an extra sheet with the same headings.

EXHIBIT 2 - PERSONAL HISTORY QUESTIONNAIRE

Page 3

25. LICENSES State every license held by you (motor vehicle, trade, or professional registration).

DATES (Month, Day and Year)		License Number	Type of License	LICENSING AGENCY	
Issued on	Expires on			Name	Address
3/1/71	3/31/74	0563932956	OPERATOR	NY. STATE	LICENSE
		3/31/71	10 6372-43		

DO NOT WRITE
IN THIS BOX
License Ver.
 Now
 #
 Not Rec.
See P. 4
PR
Investigator

26. COURT RECORD: Indicate all convictions including traffic violations.

Date	Violation	Police Pct.	Name & Location of Court	Penalty
	NO NE			

DO NOT WRITE
IN THIS BOX
Traffic Ver.
 TSCB
 MVB
 LIC
See P. 4
PR
Investigator

Convictions for juvenile delinquency, youthful offender or wayward minor under age 19 need not be reported.

7. SOCIAL STATUS Answer Section A. If ever married, also answer Section B.

A. PRESENT SOCIAL STATUS (check one only)		W 13083
<input checked="" type="checkbox"/> Married	<input type="checkbox"/> Unmarried	
B. Date(s) of Marriage	Husband's Name or Wife's Maiden Name	Name and Address of Agency Issuing Marriage Certificate
11/2/72	JOEL BERNS	NEW YORK CITY CLERK

DO NOT WRITE
IN THIS BOX
Social Status Ver.
 #
 Now
 Not Rec.
See P. 4
PR
Investigator

8. U. S. MILITARY RECORD If you were ever in the Armed Forces of the U. S., fill in the following as it appears on your discharge:

TYPE (e.g. Honorable; Dishonorable; Hon. Conditions; Etc.)	PLACE OF DISCHARGE	DATE OF DISCHARGE
ISSUED TO (Name)	RANK	SERIAL OR SERVICE NUMBER
DATES OF ACTIVE SERVICE From To	ATTACHED TO	BRANCH OF SERVICE
PLACE OF ENLISTMENT OR INDUCTION	DATE OF ENLISTMENT OR INDUCT.	MIL. OCCUPATION SPECIALTY (M.O.S.)
PLACE OF BIRTH	DATE OF BIRTH	OCCUPATION
PERMANENT MAILING ADDRESS	<input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED	
HOME ADDRESS AT ENTRY INTO SERVICE	LOCAL BOARD (No., County and State)	

DO NOT WRITE
IN THIS BOX
Military Rec. Ver.
 Now
 #
 Not Rec.
See P. 4
PR
Investigator

Citizenship
 Res. at entry
 Present Res.
 Mil. War Service
 Hon. Discharge
See P. 4
PR
Investigator

EXHIBIT 2 - PERSONAL HISTORY QUESTIONNAIRE

Page 4

RESIDENCE State every place where you have resided during the past 20 years. Start with your present address and work backward. If you claim veteran's credits, include residence at time of entry into armed forces.

DATES (Month and Year)		FULL ADDRESS
From	To	
69	present	1661 STONE PARKWAY - 3 - BROOKLYN-N.Y.
67	6/69	1681 59TH ST BROOKLYN, N.Y.
67	11/67	QUARTERS CIII GOVERNOR'S ISL. N.Y.
67	9/67	3231 Temple Dr SAN JOSE, CALIF.
66	6/67	545 N. 2ND AVE. SAN JOSE, CALIF.
3/66	11/66	217 GRANITE PACIFIC GROVE, CALIF.
63	3/66	USMC 29 PALMS CALIF.
63	11/63	525 STOCKTON, SAN FRANCISCO, CALIF.
62	4/63	TAKE ST FAIRFIELD, CALIF.

DO NOT WRITE IN THIS BOX HOW VERIFIED	
SOURCE	DATE
Elmira Police	3/20/71
B-5657 32956	
106372-43	

30. DETAILED ANSWERS TO QUESTIONS 10-20

Question No.	Explanation
	As per a letter sent to Ste Marie in Paris (by the Dept. of Investigation), the education she received is only an Elementary Education. Since she claims a HS education from this school on her experience paper she does not meet the minimum requirements and should be marked NO.

NOTE: If you need more space, attach an extra sheet with the same headings.

31. DECLARATION - by Applicant (Note: A material false statement willfully or fraudulently made by an applicant will automatically cause his disqualification, and may cause prosecution.)

I declare, under penalty of the penal law, that I completed this personal history questionnaire and that the statements contained therein are, to the best of my knowledge and belief, true and correct and that I have not knowingly and willfully made a false statement or given information which I know to be false in connection therewith. I am aware that this appointment is made subject to my qualifying in the appropriate character investigation, medical examination and such other qualifications as provided by the Civil Service Law, the Civil Service Rules and Regulations and the notice for the examination for this position. I know that failure to fulfill any of these conditions will result in the revocation of my appointment.

SIGNATURE OF APPLICANT

John Michael Dennis Burns

DATE -

5/18/73

EXHIBIT 3 - EXPERIENCE PAPER

EXHIBIT 3- EXPERIENCE PAPER

QUALIFYING EMPLOYMENT. List in chronological order these positions you have held which tend to qualify you for the position sought. Begin with the present or most recent position. Use a separate block for each position. List as a separate employment every material change of duties although with the same employer. Include pertinent experience or training in the armed forces.

1	Dates of Employment (give month and year)	Length of Employment	Exact Title of Your Position	Starting Salary per
	From 11/71 to 1/72	1 Yrs. 1 Mos.	Self- Had Specialty Shop	Last Salary . per
Name and Address of Employer			Nature of Employer's Business	
Annick's Boutique, Inc New York Plaza, N.Y.			Specialty Shop	
Number and Titles of Employees You Supervise			Title of Your Immediate Superior (Not his name)	None
			If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	No. of Hours Worked per Week 45
2 - Sales Personnel				
Describe Your Duties Owned and Operated above store. Ordered merchandise, supervised employees. I operated the entire store on my own.				
3	Dates of Employment (give month and year)	Length of Employment	Exact Title of Your Position	Starting 150 WK per
	From 11/69 to 9/71	1 Yrs. 10 Mos.	Executive Secretary	Last 170 WK per
Name and Address of Employer			Nature of Employer's Business	Stock Brokerage firm
Baird, Inc. 140 Broadway, NYC			Title of Your Immediate Superior (Not his name)	Senior -Vice President
Number and Titles of Employees You Supervise			If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	No. of Hours Worked per Week 35
Describe Your Duties Correspondence and office procedure for the Senior Vice President, in charge of Sales. Overlooked 6 other secretaries Answered phones, general office duties.				
4	Dates of Employment (give month and year)	Length of Employment	Exact Title of Your Position	Starting 135 WK per
	From 6/68 to 10/69	1 Yrs. 5 Mos.	Girl Friday	Last 150 WK per
Name and Address of Employer			Nature of Employer's Business	Stock Brokerage firm.
Geo. A. Rogers & Co., Inc. 120 Broadway - NYC			Title of Your Immediate Superior (Not his name)	President
Number and Titles of Employees You Supervise			If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	No. of Hours Worked per Week 35
Describe Your Duties Answered Phones, Files, Correspondence. Computed confirmations of stock transactions. General Office duties.				
	Dates of Employment (give month and year)	Length of Employment	Exact Title of Your Position	Starting 125 WK per
	From 11/67 to 5/68	Yrs. 6 Mos.	Receptionist	Last 130 WK per
Name and Address of Employer			Nature of Employer's Business	Stock brokerage firm.
Emmanuel Deetjen & Co. 120 Broadway, NYC			Title of Your Immediate Superior (Not his name)	Senior Vice President
Number and Titles of Employees You Supervise			If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	No. of Hours Worked per Week 35
Describe Your Duties PBS Switchboard - Directed Visitors to appropriate parties.				

EXHIBIT 3 - EXPERIENCE PAPER

5	Dates of Employment (give month and year) From 2/67 To 4/67	Length of Employment Yrs. 3 Mos.	Exact Title of Your Position Secretary	Starting Salary 110 per wk Last Salary 110 per wk
Name and Address of Employer Western Microwave Labs. 1045 DiGiulio, Santa Clara, Cal		Nature of Employer's Business Builders of Electronic Components Title of Your Immediate Superior (Not his name) Supervisor in charge of Ordering If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No. of Hours Worked per Week 35		
Number and Titles of Employees You Supervise None				

Describe Your Duties Figured cost of specified projects. Telephone answering
Filing, and correspondence. General office duties. Left for relocation to NYC.

6	Dates of Employment (give month and year) From 4/66 To 1/67	Length of Employment Yrs. 10 Mos.	Exact Title of Your Position Statistical Typist	Starting Salary 100 per wk Last Salary 110 per wk
Name and Address of Employer California Test Bureau Monterey, California		Nature of Employer's Business Testing center Title of Your Immediate Superior (Not his name) Statistical Pool Sup. If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No. of Hours Worked per Week 35		
Number and Titles of Employees You Supervise None				

Describe Your Duties Typed all correspondence, and reports handed to me.
Did charts, and figures. Budgets, etc.

7	Dates of Employment (give month and year) From 7/64 To 3/66	Length of Employment 1 Yrs. 8 Mos.	Exact Title of Your Position Personnel secretary	Starting Salary 100 per wk Last Salary 130 per wk
Name and Address of Employer USMC Exchange, 29 Palms, Cal.		Nature of Employer's Business Military Exchange Title of Your Immediate Superior (Not his name) Exchange Officer If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No. of Hours Worked per Week 35		
Number and Titles of Employees You Supervise None				

Describe Your Duties Correspondence. Kept track of weekly payroll hours.
Screened applicants for personnel officer. PBX, filing, kept all personnel records, etc. General office duties.

8	Dates of Employment (give month and year) From _____ To _____	Length of Employment Yrs. _____ Mos. _____	Exact Title of Your Position	Starting Salary _____ per wk Last Salary _____ per wk
Name and Address of Employer		Nature of Employer's Business		
Number and Titles of Employees You Supervise		Title of Your Immediate Superior (Not his name)		
Describe Your Duties		If with New York City or State, was this a provisional appointment? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No. of Hours Worked per Week		

EXHIBIT 4 - EXPERIENCE PAPER

OTHER EXPERIENCE: List here only the other employments you have had which were not included before.

** Any additional qualifications you have for the position may be listed here; for example: field work in connection with training, authorship or co-authorship of books or of articles in recognized journals, special certification from professional boards, other professional attainments, etc. (Caution: Do not mention your name.) Additional courses or experience may also be listed here.*

I am an American citizen. I was born, raised, and educated in France. Perhaps, my knowledge of French, may be of value to the NYPD as an interpreter or in doing French correspondence in an appropriate department or office or precinct.

EXHIBIT 4 - TERMS AND CONDITIONS OF CERTIFICATION
AND APPOINTMENT

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL
55 THOMAS STREET, NEW YORK, N.Y. 10013

Department must forward
this form to the Department
of Personnel with
the disappearance of the
certification.

TERMS AND CONDITIONS OF CERTIFICATION AND APPOINTMENT (OR PROMOTION)

1. NAME	SHAW, ERNIE M	2. ADDRESS	146-1 SHORE PARKWAY-B-C Street & No. BROOKLYN, N.Y. 11214	3. TITLE OR LIST	POLICE ADMINISTRATIVE	4. LIST NUMBER	705
				5. TITLE APPOINTED (OR PROMOTED) TO (If same as list title, so state)			
				Serge			
				6. DEPARTMENT	Police		7. DATE OF APPT.
							4/30/73

I, the above-named person, an eligible whose name appears on the above-mentioned list, hereby accept certification and appointment (or promotion) to the above position subject to the following terms and conditions.

1. That this certification and appointment is made subject to my qualifying in the appropriate character investigation, medical examination and such other qualifications as provided by the Civil Service Law, the Civil Service Rules and Regulations and the advertisement for the examination for the above position.
2. That any claim for Veteran's Preference credits which I may have made in connection herewith is provisionally granted by the Department of Personnel.
3. That failure to fulfill any of these conditions will result in the revocation of such certification and appointment (or promotion).
4. I certify that I have been made aware that my appointment is subject to investigation and that I may begin my investigation immediately by notifying the Department of Personnel, 55 Thomas Street, New York, N.Y. 10013.
5. I further certify that I have read the provisions of Rule 4.7.9 of the City Civil Service Rules and Regulations as set forth below:

"The director, may, either upon request of an appointing officer or upon his own initiative, certify notice of such conditional certification pursuant to this paragraph shall be given to such eligible at the time of appointment or promotion, as the case may be. Whenever, upon subsequent investigation, medical test or other qualifying test or requirement, an eligible, thus certified, is found to be not qualified, such certification shall be revoked and the employment, if any, of such eligible terminated."

Date

4/30/73

Signature

WITNESS:

Appointing Officer or his Agent

Defendants' Exhibit "4"

EXHIBIT 5 - LETTER DATED JANUARY 6, 1974 and
INTERDEPARTMENTAL MEMOS

C-75-743

CITY CIVIL SERVICE COMMISSION
220 CHURCH STREET, NEW YORK, N.Y. 10013

January 6, 1974

ALPHONSE E. D'AMROSS, CHAIRMAN
JAMES W. SMITH, MEMBER
JOSEPHINE L. GAMBINO, MEMBER

Ms. Annick M. Bernas
1461 Shore Parkway - 3C
Brooklyn, N.Y. 11214

Dear Ms. Bernas:

Your appeal to the City Civil Service Commission is hereby acknowledged. Pursuant to the Rules of the City Civil Service Commission, you are not entitled to make an oral appeal. However, the City Civil Service Commission affords you or your counsel or other persons selected by you, an opportunity to submit written statements setting forth in detail all relevant facts, data, reasons, and such other information as you deem advisable, why you believe you should be qualified for this position.

In the event that you fail to submit any additional written statements within twenty (20) days from the date of this letter, the City Civil Service Commission may deem such failure to reply to constitute your desire to rest solely on the record, including your recent correspondence. In that event, a decision may be rendered by the City Civil Service Commission after review of such record and correspondence, and no later submission of written statements by you will be permitted.

Yours truly,

Nicholas LaPorte, Jr.
Secretary

Deny appeal C-75-2427-75
Dated Feb 2/24/75

Defendant's Exhibit "5"

71a

EXHIBIT 5 - LETTER DATED JANUARY 6, 1974 and
INTERDEPARTMENTAL MEMOS

C 75-745

Unit C

461

THE CITY OF NEW YORK
Intradepartmental Memorandum

February 4, 1975

To: Mr. Nicholas LaPorte, Secretary to the Civil
Service Commission
From: Thomas P. Curley, Director,
Bureau of Investigations

Date: February 4, 1975
Subject: Second Appeal-BURNS: Annick M.
1461 Shore Parkway
Brooklyn, NY 11214

Police Administrative
Aide, Exam #2251
List # 705 Case #0900
Apptd 4/30/73

As per her previous appeal the candidate has failed to present evidence of high school graduation or its equivalent by 12/21/72.

Information submitted for this appeal is as follows:

- 1) Transcript from New York Institute of Finance indicating 2 courses taken in 1969.
- 2) A 4 month evaluation sheet from the Police Department Career Development Division.
- 3) Lett. of recommendation from
 - a) William E. Sutorius Commanding Officer
62nd Precinct
 - b) Joseph P. Flanagan-Administrative Lieutenant
62nd Precinct
 - c) Anthony Marra, Sergeant in charge of
62nd Precinct Investigating Unit.

The above documents show that the candidate is a competent and diligent employee, but they do not substantiate her claim of having met the educational requirements by 12/21/72.

In view of this, it is recommended that this appeal not be granted.

GW/am/pr

Thomas P. Curley
Director, Bureau of Investigations

2.19.75 — Appeal timely. Candidate entitled to a written appeal to the Commission. AL

RECEIVED
FEB 11 1975
SECRETARY

Defendant's Exhibit "J"

72a

EXHIBIT 5 - LETTER DATED JANUARY 6, 1974 and
INTERDEPARTMENTAL MEMOS

N.Y.C. 14-100M 0004129(71)

Q-75-74-3 Unit C

THE CITY OF NEW YORK
Intradepartmental Memorandum

#15912

To: Mr. N. LaPorte, Secretary
From: Mr. T. P. Curley, Director
Bureau of Investigations

Date: DEC 30 1974
Subject: Appeal
BERNS, Annick M.
Police Administrative Aide
Exam 2251, List 705
Appt. 4-30-73, Case 09003

The minimum requirements for Police Administrative Aide are as follows:

"High School graduation or evidence of having passed an examination for a high school equivalency diploma or US Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 on the examination for the diploma or certificate; and either two years of paid full-time clerical experience or two years of active military duty or one year of full-time study (30 credits) in an accredited college or university or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of all candidates. The minimum requirements must be met by the last date for the receipt of applications (12-21-72)."

The candidate was asked to submit proof that she graduated from high school by 12-21-72, but she failed to do so. To date, she has only presented a document from "Ecole Privee De Filles Sainte-Marie" which states that she graduated from elementary school in 1952. In view of this, it is recommended that her appeal not be granted.

T. P. Curley
T. P. Curley, Director
Bureau of Investigations

M
GW:ml:pr

RECEIVED
Dec 31 1974
SECRETARY

1.3.75 - Appeal timely. Candidate only entitled to a written appeal to the City Civil Service Commission.

S. C. Alde

Defendant's Exhibit "5".

73a

EXHIBIT 5 - LETTER DATED JANUARY 6, 1974 and
INTERDEPARTMENTAL MEMOS

Unit C

#15912

Mr. N. LaPorte, Secretary

Mr. T. P. Curley, Director
Bureau of Investigations

DEC 30 1974

Appeal
BERNS, Annick M.
Police Administrative Aide
Exam 2251, List 705
Appt. 4-30-73, Case 09003

The minimum requirements for Police Administrative Aide are
as follows:

"High School graduation or evidence of having passed an examination
for a high school equivalency diploma or US Armed Forces GED certificate with
a score of at least 35 on each of the five tests and an overall score of at
least 225 on the examination for the diploma or certificate; and either two years
of paid full-time clerical experience or two years of active military duty or one
year of full-time study (30 credits) in an accredited college or university or
an equivalent combination of experience and education. However, high school
graduation or its equivalent as described above is required of all candidates.
The minimum requirements must be met by the last date for the receipt of
applications (12-21-72)."

The candidate was asked to submit proof that she graduated from high
school by 12-21-72, but she failed to do so. To date, she has only presented
a document from "Ecole Privee De Filles Sainte-Marie" which states that she
graduated from elementary school in 1952. In view of this, it is recommended
that her appeal not be granted.

T. P. Curley, Director
Bureau of Investigations

GW:ml:pr

Defendant's Exhibit "5"
4

EXHIBIT 6 - LETTER DATED SEPTEMBER 19, 1974 AND
CERTIFICATE FROM FRENCH PRIMARY SCHOOL



POLICE DEPARTMENT
NEW YORK, N.Y. 10014

September 19, 1974

Department of Personnel
Bureau of Investigations
220 Church Street
New York, N.Y. 10013

Dear Sirs:

Annick M. Berns was appointed as a Police Administrative Aide on April 30, 1973, from Exam #2251.

Background investigation reveals Ms. Berns does not possess a high school diploma as required by the Office of Examination of the Civil Service Commission. She has presented a transcript from the Ecole Parisienne D'Hotesses. Ms. Wolfe, Cultural Affairs Division, French Embassy, in a telephone interview, stated this was a training school for women, ages sixteen (16) to thirty (30) years, to teach young women as guides and hostesses for business conferences, the stock exchange, etc. The emphasis is on composure appearances and character. Ms. Berns has presented a certificate from Ecole Privee de Filles Sainte Marie. This is a certificate of primary education.

In view of this information, it is requested that the certification be revoked and Police Administrative Aide Annick Berns services be terminated.

Sincerely,

Henry R. Morse
Assistant Chief
In Command
Personnel Bureau

TPOB/fr

Defendant's Exhibit "C"

EXHIBIT 6 - LETTER DATED SEPTEMBER 19, 1974 AND
CERTIFICATE FROM FRENCH PRIMARY SCHOOL

Civilian C-5135

ÉCOLE PRIVÉE DE FILLES
SAINTE-MARIE

49, rue Bobillot - 75013 PARIS

331-02-13

Mme Loupiague, directrice de l'École
Privée de Filles, 49 rue Bobillot Paris 13^e
certifie sur l'honneur que
Mademoiselle LEGOFF Annick
née le 10/5/43. a été reçue
au C.E.P. (Certificate d'Études Primaires)
en 1957.

Fait à Paris le 6.11.73.

l'original.

ÉCOLE PRIVÉE DE FILLES
49, Rue Bobillot - 75013
PARIS 13^e

C.E.P. (Certificate d'Etudes Primaires) is translated to mean
Certificate of Primary Study - Elementary School.

R.P.Y.

Enfants Exhibit 6

**EXHIBIT 7 - NOTICE FROM PERSONNEL DIRECTOR DATED
NOVEMBER 6, 1974**



THE CITY OF NEW YORK - DEPARTMENT OF PERSONNEL
220 Church Street - New York, N.Y. 10013

NOTICE OF PERSONNEL DIRECTOR ACTION

Ms. Annick Michele Barnes
1461 Shore Parkway - 3C
Brooklyn, New York 11214

P.D. ITEM NO.	DATE
74-4340	11.6.74
Position Police Administrative Aide, Exam. No. 2251, List No. 703 Case No. 9003	

The Personnel Director has taken the action checked below in connection with your qualification for the above mentioned position. If you have been found NOT QUALIFIED and you have already been appointed, your department has been requested to terminate your employment.

- 1. Marked you **QUALIFIED** in investigation
- 2. GRANTED your claim for veteran preference credits
- 3. GRANTED your claim for disabled veteran preference credits
- 4. GRANTED your claim for veteran preference credits but DENIED your claim for disabled veteran preference credits for the reason shown below
- 5. DENIED your claim for veteran preference credits and for disabled veteran preference credits for the reason shown below
- 6. DENIED your claim for veteran preference credits for the reason shown below

REASON FOR DENIAL OF VETERAN PREFERENCE OR DISABLED VETERAN PREFERENCE CREDITS

The decisions of the Personnel Director, under Items 4 through 13, above, may be appealed in writing to the City Civil Service Commission, at the address shown above, within thirty (30) days of the date of this notification. However, no appeal from a medical disqualification will be considered unless it is accompanied by supporting medical evidence which disagrees with the determination of the examining physician.

NOTE RE ITEMS 14, THROUGH 19

If you have been marked not qualified for any of the reasons mentioned in Items 14 through 19, you may not appeal to the City Civil Service Commission. However, if and when you correct the reason for your disqualification, you may request reconsideration by writing to the Director of Investigation at the above address, forwarding any evidence which may be pertinent. Do Not Telephone. The Personnel Director will then reconsider your case, provided the list upon which your name appears is still in existence.

- Marked you NOT QUALIFIED for:**
- 7. Failure to meet educational requirements.
 - 8. Failure to meet experience requirements.
 - 9. Failure to meet medical requirements.
 - 10. Failure to meet citizenship requirements.
 - 11. Failure to meet age requirements.
 - 12. Failure to meet residence requirements.
 - 13.

- Marked you NOT QUALIFIED (See Note to the left)**
- 14. Because investigation was discontinued at your request.
 - 15. For failure to appear for interview as requested on

- 16. For failure to appear for medical examination.
- 17. For failure to appear for, or to cooperate in, the completion of investigation.
- 18. For failure to reply to Form DP 484 A (Request for Supplementary Information).
- 19. For

Defendant's Exhibit "7"

EXHIBIT 8 - NOTICE OF CITY CIVIL SERVICE COMMISSION ACTION DATED FEBRUARY 26, 1975

SM - 403049(74)



THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION
220 Church Street - New York, N.Y. 10013

NOTICE OF CITY CIVIL SERVICE COMMISSION ACTION

Ms. Annick M. Berns
1461 Shore Parkway - 3C
Brooklyn, New York 11214

ITEM NO.	DATE
C-75-743	2.26.75
LIST NO.	APPL. NO.
705	
EXAMINATION NO.	
	2251
TITLE	
Police Administrative Aide	

The City Civil Service Commission has taken the action indicated by the checked box below in connection with your eligibility for the title indicated above:

- 1. GRANTED your appeal and marked you QUALIFIED
- 2. GRANTED your claim for veteran's preference.
- 3. GRANTED your claim for disabled veteran's preference.
- 4. Marked you QUALIFIED, assigned a grade of % and placed your name on the eligible list.
- 5. DENIED your claim for veteran's preference because
- 6. DENIED your request for re-examination for
- 7. DENIED your appeal on your disqualification for the above position.
- 8. GRANTED your request for a hearing before it. The hearing will be held in the Board Room, Room 400, 220 Church Street on:
Please be prompt, and be prepared to submit oral arguments in connection with your appeal. You may, if you wish, have an attorney or other person represent you at this appeal hearing, but in any event, you must be present. In the event you fail to appear promptly at the stated time, the City Civil Service Commission may deem such non-appearance to constitute your desire to rest solely on the papers already contained in your personal history file. In that event, a decision may be rendered by the City Civil Service Commission after a review of such file and no later appearance will be permitted.
- 9. GRANTED your appeal on qualifying experience
- 10.

Mr. Frawley, P.D., Terminate services
if still employed.
Certification
cc: Administrative Services
Investigations Bureau
Recruitment & Community Programs
File

Nicholas LaPorte, Jr.
Secretary

km

Defendant to Exhibit "8"

ORDER OF U.S. COURT OF APPEALS, SECOND CIRCUIT,
VEGA VS. CIVIL SERVICE COMMISSION CITY OF NEW
YORK, ET AL.

United States Court of Appeals
SECOND CIRCUIT

44-241-
713-241

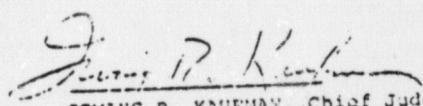
At a Stated Term of the United States Court of Appeals, in and for the Second Circuit,
held at the United States Court House, in the City of New York, on the eighteenth
day of March, one thousand nine hundred and seventy-five.

Present:

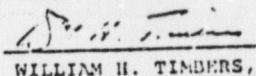
Circuit Judges.

JOHN VEGA, Plaintiff-Appellee -against- THE CIVIL SERVICE COMMISSION, CITY OF NEW YORK, HARRY I. BRONSTEIN, et al. Defendants-Appellants	75-7007 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
--	---

Whereas the stipulation of settlement filed by the opposing parties has rendered this case moot, it is ordered that the judgment below be vacated and the case remanded to the United States District Court for the Southern District of New York with instructions to dismiss with prejudice and without costs.


 IRVING R. KAUFMAN, Chief Judge.




 WILLIAM H. TIMBERS, Circuit
Judges.

Appellant's Exhibit 9

NOTICE OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(CAPTION OMITTED)

-----x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of REUBEN DAVID, sworn to the 6th day of June, 1975, the affidavit of THOMAS P. CURLEY, sworn to the 3rd day of June, 1975, the statement under Rule 9(g) and upon all the papers and proceedings had herein the undersigned will move the Court on the 19th day of June, 1975 in Room 1904, before the HON. CHARLES H. TENNEY, United States District Judge, pursuant to Rules 56(b) of the Rules of Civil Procedure granting judgment in favor of the defendants, dismissing the complaint on the ground that there is no genuine issue as to any material fact and that the defendants are entitled to a judgment in their favor as a matter of law.

80a

NOTICE OF MOTION FOR SUMMARY JUDGMENT

Dated: New York, N.Y.
June 6, 1975

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, N.Y. 10007

By /s/ Reuben David
REUBEN DAVID
Assistant Corporation Counsel
566-2503

TO:

Samuel Resnicoff, Esq.
Attorney for Plaintiff
280 Broadway
New York, N.Y. 10007

AFFIDAVIT OF REUBEN DAVID

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

REUBEN DAVID, being duly sworn deposes
and says:

1. I am an assistant Corporation
Counsel in the office W. BERNARD RICHLAND, Corpor-
ation Counsel of the City of New York, the attor-
ney for the defendants herein. The defense of
the above captioned action has been assigned to
me, and as such I am fully familiar with the
facts hereinbelow.

2. A statement under Rule 9(g) is
submitted herewith which indicates that there
is no genuine issue as to any material fact and
therefore the defendants are entitled to summary
judgment in their favor.

3. Attached hereto is an affidavit of
Mr. Thomas F. Curley as to the facts and circum-
stances of this case. A memorandum of law is
submitted herewith.

AFFIDAVIT OF REUBEN DAVID

WHEREFORE, deponent respectfully prays
that defendants' motion for summary judgment be
granted dismissing the complaint.

/s/ Reuben David
REUBEN DAVID
Assistant Corporation Counsel

(Jurat omitted in Printing)

AFFIDAVIT OF THOMAS P. CURLEY

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

THOMAS P. CURLEY, being duly sworn, de-
poses and says:

I am the Director of the Bureau of In-
vestigations of the Department of Personnel of the
City of New York. This Bureau is charged with
the responsibility of investigating the eligi-
bility of individuals considered for appointment
to positions in the City Civil Service. Last year
the Bureau investigated the qualifications of
more than 35,000 individuals.

I submit this affidavit in support of
the defendants' motion for summary judgment. I
am fully familiar with the facts of said liti-
gation.

The plaintiff applied for the position
of Police Administrative Aid for which the Notice
of Examination is binding on both the plaintiff

AFFIDAVIT OF THOMAS P. CURLEY

and the defendants. The Notice of Examination requires that all applicants must meet an education requirement. The plaintiff clearly stated on her application that she was a high school graduate and had one year of college. In view of the fact that the plaintiff represented herself as meeting and even surpassing the educational requirement, the defendants had no alternative but to accept her as a qualified applicant subject to a final determination of her qualifications.

The majority of applicants who apply for City positions accurately represent their qualifications on their applications, and because of the tremendous staffing needs of City agencies, coupled with the impracticability of investigating applicants prior to appointment, the defendants have for a number of years (as permitted by Civil Service Law) made appointments from eligible lists subject to later investigation and verification of their qualifications. Each person who receives an appointment under these conditions is not only made aware of this fact but signs a statement which indicates that he, or she, knowingly consents

AFFIDAVIT OF THOMAS P. CURLEY

to this procedure and acknowledges that the appointment may be revoked if it is found that the appointee fails to meet any of the requirements set forth in the Notice of Examination.

In the course of the investigation into the appointee's qualifications, he, or she, is given every opportunity and assistance to establish his, or her, eligibility. In the course of this investigation, the plaintiff did not present any document which she claimed established that she graduated from high school in France. Instead, she took a high school equivalency examination in N.Y. State and received a High School Equivalency Diploma in 1974, approximately one year and a half beyond the last date for meeting the educational requirement.

The plaintiff has not, either during the course of the original investigation, or in her subsequent appeal to the Civil Service Commission, or in her complaint in these proceedings, presented any documentation which establishes that she possessed a high school education on the last date for receipt of application, as required in the Notice of Examination. If she had presented valid documentation

AFFIDAVIT OF THOMAS P. CURLEY

supporting her contention that she met the educational requirement, she would have been qualified. In fact, these proceedings would be made unnecessary if the plaintiff presents the defendant Department of Personnel documentation of her contention that she completed a high school education in France prior to December 29, 1972. No one is interested in depriving the plaintiff of a rightful appointment if she meets the minimum educational qualifications, but by the same token, the respondents are mandated to apply all qualifications equally to everyone, and plaintiff cannot be given any preference over anyone else in meeting the minimum eligibility requirements.

It is respectfully submitted that qualifying a candidate who has failed to establish that she had the education that she represented herself as possessing at the time of application would merely encourage misrepresentation and reward those who did misrepresent their qualifications.

/s/
Thomas P. Curley

(Jurat omitted in Printing)

RULE 9(g) STATEMENT OF MATERIAL FACTS AS TO
WHICH DEFENDANTS CONTEND THERE IS NO GENUINE
ISSUE TO BE TRIED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

The defendants herein contend that
there is no genuine issue of fact to be tried
with respect to the following material facts:

1. Plaintiff took Civil Service Examina-
tion No. 2251 for Police Administrative Aide.

2. The Notice of Examination stated
under the heading of Minimum Requirements the
following:

"High school graduation or
evidence of having passed an
examination for high school
equivalency diploma * * *
However, high school graduation
or its equivalent as described
above is required of all
candidates."

3. The Notice of Examination further
provided

"The minimum requirements must be
met by the last date for the receipt
of application."

It further provided

APPLICATION: Received from December

RULE 9(g) STATEMENT OF MATERIAL FACTS AS TO
WHICH DEFENDANTS CONTEND THERE IS NO GENUINE
ISSUE TO BE TRIED

1, 1972 to December 27, 1972."

4. Plaintiff filed her application in which she stated that she graduated from High School.

5. Plaintiff was certified to the Police Dept. and was appointed subject to investigation in accordance with law.

6. Upon investigation, plaintiff presented a letter dated June 11, 1973 indicating that she obtained Certificat d'Etudes Primaires.

7. She subsequently presented a High School Equivalency Diploma, 1974 series.

8. After plaintiff's six-month probationary period expired, upon discovering that plaintiff did not meet the minimum requirements, as indicated in the Notice of Examination, which are applicable to all candidates, plaintiff's certification, which was subject to investigation was revoked.

9. Plaintiff was given the right to submit a written appeal. No oral argument was permitted. Plaintiff submitted no High School Diploma or evidence of having passed an exami-

RULE 9 (g) STATEMENT OF MATERIAL FACTS AS TO
WHICH DEFENDANTS CONTEND THERE IS NO GENUINE
ISSUE TO BE TRIED

nation for a high school equivalency diploma
by December 29, 1972.

10. In her written appeal (Schedule "N" herein), plaintiff in an attempt to establish that her "Certified d'Etudes Primaires" should be deemed sufficient and instead of a High School diploma, stated the following:

"I learned and mastered English in a period of three (3) years, from the age of 11 to 14, which was taught to me in my French School, this alone should show the high degree of the french educational system."

11. The foregoing statement of facts presents no genuine issue as to any material fact, and that the defendants are entitled to a judgment as a matter of law dismissing the complaint.

Dated: June 6th, 1975

Respectfully submitted

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for the Defendants,
Municipal Building
New York, N.Y. 10007

By /s/
REUBEN DAVID
Assistant Corporation Counsel

AFFIDAVIT OF THOMAS P. CURLEY

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

THOMAS P. CURLEY, being duly sworn,
deposes and says:

I am now the Assistant Personnel
Director for Administrative Services. At the
time the material events set forth in the Com-
plaint occurred, I was the Director of the
Bureau of Investigations of the Department of
Personnel of the City of New York.

In my original affidavit of June 3,
1975, I called to the Court's attention the
fact that "The plaintiff has not, either dur-
ing the course of the original investigation,
or in her subsequent appeal to the Civil
Service Commission, or in her complaint in
these proceedings, presented any documentation
which establishes that she possessed a high
school education on the last date for receipt
of application, as required in the Notice of

AFFIDAVIT OF THOMAS P. CURLEY

Examination. If she had presented valid documentation supporting her contention that she met the educational requirement, she would have been qualified. In fact, these proceedings would be made unnecessary if the plaintiff presents the defendant Department of Personnel documentation of her contention that she completed a high school education in France prior to December 29, 1972. No one is interested in depriving the plaintiff of a rightful appointment if she meets the minimum educational qualifications, but by the same token, the respondents are mandated to apply all qualifications equally to everyone, and plaintiff cannot be given any preference over anyone else in meeting the minimum eligibility requirements."

I have read the affidavit of Ms. Berns dated June 17, 1975. In the affidavit Ms. Berns singularly fails to furnish the requested documentation. Instead she gives her version of what the French educational system is. In her affidavit (paragraph 9 thereof) she makes certain allegations concerning the French school

AFFIDAVIT OF THOMAS P. CURLEY

system and then alleges that "students who show academic talents or traits and characteristics which are superior to other students are advanced and given secondary education." The record is completely barren of any proof whatever that she is a superior student or that this is in any way applicable to her. Not only is the record barren of any showing that she is superior but the proof that she has submitted shows that she was not given any special advance diploma. In Schedule "C" to her petition she produces an unofficial unauthenticated translation of a letter which states that in 1957, when she was 14 years of age, she graduated to CEP (Certificat d'Etudes Primieres). Thus, there is no need for any discussion concerning her allegation that after four years of schooling in France a student can start their secondary education as opposed to the fact that it takes eight years of schooling in the United States before the student starts his or her secondary education.

Another unfortunate dilemma facing

AFFIDAVIT OF THOMAS P. CURLEY

the plaintiff, which her affidavit does not resolve, is that there is no consistency concerning her attendance and her educational record as set forth in the various documents which she has executed. For example, in her original Personnel History Questionnaire under No. 23. Educational Record. she states "that she attended St. Lerebours from 10/49 to 7/53 and after four years completed the fourth grade. Thereafter, she attended Ste. Marie from 10/53 to 7/61 and after eight years completed the 12th grade." Thus, her original allegation that she completed elementary and high school in 12 years and received a high school diploma has now evolved into an allegation that she has completed 12 years of elementary and high school education in eight years.

The allegations in paragraph 10 of the reply affidavit of Ms. Berns are similarly defective. While she alleges that she took and successfully passed certain courses, there is no documentation whatsoever to substantiate her claim. The other allegations set forth in said paragraph 10 are simply not substantiated.

As to paragraph 11 of her complaint

AFFIDAVIT OF THOMAS P. CURLEY

there is nothing to show in the record that she submitted a certificate of completion containing the courses she alleges. The only notation we have is that she did attend said school where the diploma or degree she received was for "hostess". (Defendants' Exhibit 3)

Based on all of the above, it is respectfully submitted that no weight should be given to the allegations set forth above as they are not only contrary to common sense but also contrary to all of the documentary evidence which the plaintiff hereself has submitted.

As to the further allegation that the defendant has the burden of proof to show that her alleged secondary education is not equivalent to a local high school education it is respectfully urged, that, the burden of proof is clearly on the petitioner, particularly in an instance such as this where a great deal of information is in her control.

Also attaahed to my affidavit is the authorative statement of Pierre Tabatoni, Cultural Counselor, Permanent Representative of French Universities in the United States, which

AFFIDAVIT OF THOMAS P. CURLEY

is completely destructive of plaintiff's contention. Mr. Tabatoni unequivocally certifies that "'A Certificat d'etudes primieres' may be considered the approximate equivalent of the completion of the eighth grade in the American school system."

/s/
THOMAS P. CURLEY

(Jurat Omitted in Printing)

STATEMENT OF PIERRE TABATONI

Ambassade de France

JAS/
SERVICES
DU CONSEILLER
CULTUREL

No. 570 /DOC

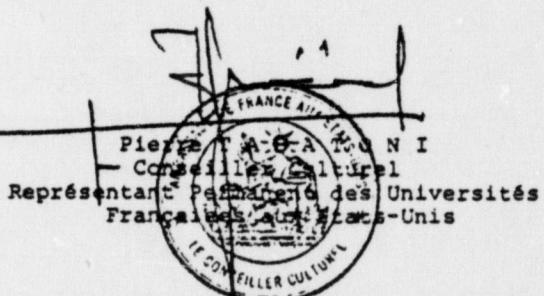
972 FIFTH AVENUE
NEW YORK, N.Y. 10021
(212) 737-6700

June 18, 1975

TO WHOM IT MAY CONCERN:

I the undersigned Pierre TABATONI, Cultural Counselor, Permanent Representative of French Universities in the United States, do hereby certify that the ECOLE SAINTE-MARIE, located at 49, rue Bobillot, 75013 Paris, is a private girls' school run by the Sisters of Saint Vincent-de-Paul. According to the Guide National de l'Enseignement Privé, its curriculum extends from kindergarten to the "classe de troisième", which corresponds approximately to the eleventh grade in an American high school.

A "Certificat d'études primaires" may be considered the approximate equivalent of the completion of the eighth grade in the American school system.



STATEMENT OF PIERRE TABATONI

ENSEIGNEMENT PRIVE PRIMAIRE

	Garçons	Mixte
ÉCOLE DU SAINT-ESPRIT 72, rue de Wallerius. ☎ 307-79-08. Externat. Demi-pension. Catholique. (Établissement sous contrat simple). Préparation au C.E.P. et à l'entrée en 6 ^e des lycées, à l'entrée en 4 ^e d'accès, en 4 ^e et 5 ^e des Collèges Techniques, en 4 ^e et 5 ^e Commerciales et en 1 ^{re} an- née des Centres d'Apprentissage. (262 élèves).		
ENSEMBLE SCOLAIRE SAINT-MICHEL G, boulevard de Picpus. ☎ 343-67-65. (voir chapitre Enseignement Secondaire)		
COURS MOLIÈRE 2, boulevard Sout. ☎ 343-44-96 et 343-27-62. Classes bilingues. (voir chapitre Enseignement Secondaire).		
ÉCOLE SAINT-ÉLOI 80, rue de Rueil. ☎ 628-54-77. Externat. Demi-pension. Catholique. Du jardin d'enfance à l'entrée en 6 ^e . Établissement sous contrat simple. Habilitation pour les Bourses Nationales.		
PARIS-13^e		
	Filles	Filles
ÉCOLE PRIVÉE LE REBOURS 44-46, bd Auguste-Blanqui. ☎ 331-05-98 et 39-70. (Établissement sous contrat simple). Externat. Demi-pension. Catholique. Du jardin d'enfance à la 3 ^e (maturité du 3 à 6 ans). Préparation au C.E.P. et au B.E.P.C. Anglais à partir de la 1 ^{re} . Section commerciale - Voir chapitre spécial.		
ÉCOLE SAINTE-MARIE (Sœurs de Saint-Vincent-de-Paul). 49, rue Béthieu. ☎ 331-02-13. Externat. Demi-pension. (220 élèves). Établissement sous contrat simple. Habilitation par les Bourses Nationales. De la classe enfantine à la troisième. Préparation au C.E.P. et au B.E.P.C. Anglais (1 ^{re}), Allemand et Espagnol (2 ^{re}). Classe de perfectionnement - 6 ^e et 5 ^e de Transition 4 ^e Prépa. Classes bilingues.		
ÉCOLE PRIVÉE DE FILLES SAINTE-JEANNE-D'ARC 19, rue Duret. ☎ 587-32-14. Externat. Demi-pension. Catholique. Établissement sous contrat simple. Du jardin d'enfance à la 7 ^e . (270 élèves). Préparation à l'entrée en 6 ^e . Anglais par méthode audio-visuelle. Classes mixtes jusqu'au CE 1 inclus.		
Garçons		
ÉCOLE DES FRÈRES « N.-D.-DE-LA-GARE » (Frères des Ecoles Christianes) 20, rue Derville. ☎ 331-42-40. Externat et demi-pension. De la 1 ^{re} à la 3 ^{re} . Préparation à l'entrée en 6 ^e et au B.E.P.C. (Anglais - Espagnol). (Établissement sous contrat simple). (331 élèves). Classes bilingues.		
ÉCOLE SAINTE-ANNE 70, rue Béthieu. ☎ 588-35-33. Externat. Demi-pension. Catholique. Habilitation pour les Bourses Nationales. Établissement sous contrat simple. Classes enfantines (mixtes). Classes primaires de la 1 ^{re} à la 3 ^{re} . Préparation au B.E.P.C. Anglais (1 ^{re} et 2 ^{re}), Allemand, Espagnol. (240 élèves).		
Mixte		
ÉCOLE MIXTE DE PLAISANCE 12, rue Crozé-Spinelli. ☎ 734-03-58. (Établissement sous contrat simple) Classes enfantines et primaires et la 1 ^{re} à la 7 ^e . Préparation à l'entrée en 6 ^e . (240 élèves).		
COURS SAINT-JOSEPH-DE-CLUNY 27, rue du Père Corentin. ☎ 331-54-50 Externat - Demi-pension - Mixte. Établissement sous contrat simple. Du jardin d'enfance à l'entrée en 6 ^e . Second cycle à l'Institution La Bruyère-Sainte-Isabelle ou Technique à l'École Technique Catherine Labouré.		

AFFIDAVIT OF D. DEL FAVERO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

D. DEL FAVERO, being duly sworn, de-
poses and says:

I am the Acting Principal Investi-
gator in charge of Unit C, and Investigator
Peter Rosoff who handled the Investigation of
Mrs. Annick M. Berns, the plaintiff in this
action, is under my direct supervision. Mr.
Rosoff is now serving two weeks of active
duty with the New York State National Guard
at Camp Drum, New York, and thus is not now
available to make this affidavit.

I submit this affidavit in support
of the defendants' motion for summary judg-
ment. I am fully familiar with the facts of
this litigation and I have studied the records
of the New York City Department of Personnel
pertaining to the matters in issue. The records
disclose that on March 11, 1974, Investigator

AFFIDAVIT OF D. DEL FAVERO

Rosoff received the Personnel History Questionnaire of the plaintiff from the Agency Participation Investigation (A.P.I.) of the New York City Police Department. A review of said Personnel History Questionnaire indicated that the A.P.I. Agency had not seen nor verified proof of a high school education or higher (see defendants' Exhibit "2", page 2, No. 23), which is a requirement for the position of Police Administrative Aide, Exam No. 2251. The minimum requirements for this position are: High school graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 on the examination for the diploma or certificate; and either two years of paid full-time clerical experience or two years of active military duty or one year of full-time study (30 credits) in an accredited college or university or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of

AFFIDAVIT OF D. DEL FAVERO

all candidates. The minimum requirements must be met by the last date for the receipt of application (12.21.72).

Mrs. Berns as a candidate was requested to submit her claimed proof of a high school diploma from France, but has failed to do so. She only submitted a letter from "Ecole Privee De Filles Sainte-Marie" which stated that she graduated from an elementary school in 1952. (Defendants' Exhibit 6, page 2).

The New York City Police Department forwarded a letter dated September 19, 1974 to the Bureau of Investigation of the New York City Department of Personnel (Defendants' Exhibit 6, page 1) concerning candidate's claimed further education.

The letter of Henry R. Morse, Assistant Chief in Command, Personnel Bureau of the New York City Police Department, significantly points out that all that Mrs. Berns presented was a certificate from Ecole Privee de Filles which is a certificate of a primary education. Therefore, Assistant Chief Henry R. Morse requested that Mrs. Berns' certification be revoked and that her services be terminated.

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AFFIDAVIT OF D. DEL FAVERO

Mrs. Berns has submitted a New York State High School Equivalency diploma, 1974 series, which diploma is not acceptable as it was issued after the last date of receipt of application. To date, plaintiff has not presented a high school diploma or its equivalency issued prior to the last date of filing.

/s/
D. Del Favero

(Jurat Omitted in Printing)

AFFIDAVIT OF THOMAS P. CURLEY

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

THOMAS P. CURLEY, being duly sworn, de-
poses and says:

I am now the Assistant Personnel Director
for Administrative Services. At the time the
material events set forth in the Complaint occurred,
I was the Director of the Bureau of Investigations
of the Department of Personnel of the City of
New York.

During the course of the Investigation of
the Plaintiff, a letter was sent to the Director,
Ecole Privee de Filles Sainte-Marie, 49, rue
Bobillot - 75013 Paris, France, requesting, among
other things, verification as to the fact that
Plaintiff had attended said School, asked for her
dates of attendance and the degree or diploma she
received upon completion of the course of in-
struction. In reply to this letter of inquiry,
the Director of said School sent us a xerox copy

103a

AFFIDAVIT OF THOMAS P. CURLEY

of the Certificate of Elementary Primary Studies
which Plaintiff received, and which Mr. Stephen
Rosenberg has translated from French into English.

/s/
THOMAS P. CURLEY

(Jurat Omitted in Printing)

AFFIDAVIT OF STEPHEN ROSENBERG

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

(Caption Omitted)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

STEPHEN ROSENBERG, being duly sworn, de-
poses and says:

I am an Associate Personnel Examiner of
the Department of Personnel of the City of New
York. I made the translations from French to
English of the attached photostats of Letter,
Certificate of Primary Studies and Envelope. In
my opinion, the said translation is accurate.

My background includes a Master of
Arts in International Affairs from John Hopkins
School of Advanced International Studies - in
which I passed the proficiency examination (both
written and oral) in French. This proficiency
examination was part of the degree requirement
and I was issued a certificate of proficiency
(this was at an advance level). I was also a
Fulbright scholar for study for one year in
Belgium. Part of the requirement for the

105a

AFFIDAVIT OF STEPHEN ROSENBERG

Fulbright grant was proficiency in the language
of the country - French was the working language
in Belgium.

/s/ STEPHEN ROSENBERG

(Jurat Omitted by Printing)

106a

TRANSLATION OF LETTER

Letter

ECOLE PRIVEE DE FILLES
SAINTE-MARIE
49, rue Bobillot - 75013 Paris
30-03-13

Paris, July 7, 1975

I the undersigned, Principal of the
ECOLE PRIVEE de FILLES, 49 rue Bobillot -
75013 Paris (Primary School) certify that:

Miss Annick Legoff regularly attended
the institution
From: October 1, 1952
To: June 30, 1957
and has obtained in June 1957;
The Certificate of Primary Studies (attached is
a copy of the Certificate)

Executed in Paris,
July 7, 1975

M.P. BOYAVAL, Principal

107a

TRANSLATION OF STATEMENT

Academy of Paris

Republic of France
Liberty-Equality-Fraternity
National Education

Department of the Seine

CERTIFICATE OF PRIMARY STUDIES

The Inspector-General of Public Education, Director of Teaching Services of
the Seine

Having seen the laws and regulations relative to the examination for the
Certificate of Primary Studies;

Having seen the method by which Miss Annick Legoff was orally examined under
conditions determined by the relevant laws and regulations;

Having seen the Certificate dated June 20, 1957 by which the cantonal
Commission of Paris sitting for the June (2) 1957 session attests that Miss Annick Legoff, born
on October 3, 1942, at _____, in the Department of _____ has
been deemed worthy of receiving the Certificate of Primary Studies, and has successfully
undertaken the tests of the "Brevet Sportif Scolaire de l'Enseignement of
the First Degree".

Granted to Miss Annick Legoff
This Certificate of Elementary Primary Studies with all the rights thereto belonging.

Paris, June 28, 1957

For the Inspector General of Public Education
Director of Teaching Services of the Seine
L'Inspect^{or} de l'Enseignement Primaire
de la Seine. (sic)

108a

TRANSLATION OF ENVELOPE

Envelope

75 - Paris 13
7/17/75

Avenue D'Italie (13th arrondissement)

Republic of France

270

Post Office

109a

LETTER IN FRENCH

ÉCOLE PRIVÉE DE FILLES
SAINTE-MARIE

49, rue Bobillot - 75013 PARIS

REK 02-13
580

Paris, le 7 Juillet 7

Je soussignée, Directrice de l'ECOLE PRIVEE
de FILLES , 49 rue Bobillot - 75013 PARIS
(Ecole primaire) certifie que :

Mademoiselle Annick LE COFF

a fréquenté régulièrement l'Etablissement
du : 1. 10. 1952
au : 30. 06. 1957
et a obtenu en Juin 1957 : le CERTIFICAT
d'ETUDES PRIMAIRES .(Ci-joint photocopie
du diplôme)

Fait à Paris, le 7 Juillet 197

M.P. BOYAVAL, Directrice

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CERTIFICATE IN FRENCH

ACADEMIE
DE PARIS

RÉPUBLIQUE FRANÇAISE
LIBERTÉ - ÉGALITÉ - FRATERNITÉ

DÉPARTEMENT
DE LA SEINE

EDUCATION NATIONALE

CERTIFICAT D'ÉTUDES PRIMAIRES

L'Inspecteur Général de l'Instruction Publique, Directeur des Services de l'Enseignement de la Seine.

Vu les textes législatifs et réglementaires relatifs à l'examen du Certificat d'Etudes Primaires :

Vu le certificat de l'examen subi par M^e Clémie Léon, dans les conditions déterminées par les textes susvisés :

Vu le Certificat en date du 20 juin 1957 par lequel la Commission cantonale d'^{1er} de l'^{1er} siégeant pour la session de juin 1957 atteste que M^e Clémie Léon, né le 3 octobre 1942 à , département d' , a été jugé digne d'obtenir le Certificat d'Etudes Primaires, et a subi avec succès les épreuves du Brevet Sportif Scolaire de l'Enseignement du 1^{er} Degré.

Délivré à M^e LÉON Clémie

le présent CERTIFICAT D'ÉTUDES PRIMAIRES ÉLÉMENTAIRES pour servir et valoir ce que de droit.

Signature du titulaire Paris, le 28 juil. 1957.

Pour l'Inspecteur Général de l'Instruction Publique,
Directeur des Services d'Enseignement de la Seine
L'Inspecteur de l'Enseignement Primaire délégué.

(1) Paris : no. arrondissement de l'enseignement (2) (nom de naissance)

(2) Paris ou l'autre

111a

ENVELOPE

CITY OF NEW YORK
DEPARTMENT OF PERSONNEL AIR MAIL

220 CHURCH ST.
NEW YORK, N. Y. 10013



Mrs. C. Barry

Mr. Thomas P. Curley, Director

Bureau of Investigations,
220 Church Street - 7th Flr.
New York, N. Y. 10013
U. S. A.

NOTICE OF CROSS-MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of ANNICK M. BEPNS, duly sworn to the 16th day of June, 1975, and upon all of the papers and proceedings had herein, the undersigned will cross-move this Court at the Courthouse, Foley Square, New York, on the 19th day of June, 1975, in Room 1904, before the Hon. CHARLES H. TENNEY, United States District Judge, for summary judgment in favor of plaintiff upon the ground there is no defense to this action and that plaintiff is entitled to summary judgment as a matter of law based on BOARD OF REGENTS v. ROTH, 408 U.S. 546, PERRY v. SINDERMAN, 408 U.S. 593, and VEGA v. THE CIVIL SERVICE COMMISSION, 385 F. Supp. 1376, and for such other, further and different relief as to the Court may seem just and proper.

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NOTICE OF CROSS-MOTION

DATED: New York, June 16, 1975.

/s/
SAMUEL RESNICOFF, Esq.
Attorney for Plaintiff
Office & P.O. Address
280 Broadway
New York, N.Y. 10007

Digby 9-3896

TO:-

W. BERNARD RICHLAND, Esq.
Corporation Counsel, City of New York
Attorney for Defendants
Municipal Building
New York, N.Y. 10007

AFFIDAVIT OF ANNICK M. BERNS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

(Caption Omitted)

-----x

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF NEW YORK)

ANNICK M. BERNS, being duly sworn, de-
poses and says:

1. I am the plaintiff in the above-
entitled action and submit this affidavit in sup-
port of my application for summary judgment and in
opposition to defendants' motion for summary judg-
ment.

2. There is no defense to this action.

Both on the law and on the facts, I am entitled
to Summary Judgment.

3. Preliminarily, I deny the allega-
tions contained in defendants' statement of mater-
ial facts submitted pursuant to Rule 9 (g) that
there are no general issues of fact in dispute.
There was no adverse action taken by the COMMIS-
SION during my probationary period. By notice
dated November 6, 1974, which was more than one
year after my probationary period had expired,

AFFIDAVIT OF ANNICK M. BERNS

The Acting Personnel Director advised me that I was marked not qualified. Furthermore, my graduation from ECOLE-PRIVEE DE FILLES, a Parochial School in Paris in 1957 was equivalent to a high school diploma. Moreover, I completed advanced Academic courses of said School until 1959.

4. On April 30, 1973, I was appointed from the eligible list to the position of Administrative Aide (\$7900.00 per annum). I am married and the mother of a daughter. I was required to serve a probationary period of six months which expired on October 29, 1973. My performance was outstanding and I received a superior rating. I was retained at the expiration of my probationary period and became a permanent employee.

5. There was no fraud perpetrated by me in the preparation of the forms which I submitted to the Civil Service Commission. I answered all questions truthfully. The CIVIL SERVICE COMMISSION with full knowledge of my schooling, etc., marked me eligible and permitted me to take the examination. In addition, the notice of examination expressly provided: "The experience papers of passing candidates only will be evaluated." In March of 1974, I was advised by

AFFIDAVIT OF ANNICK M. BERN

the Civil Service Commission to take the high school equivalency test conducted by the New York State Education Department. I received an overall score of 276, which was 51 points more than required.

6. On or about November 6, 1974, the Personnel Director advised me I was marked not qualified because of failure to meet educational requirements. I filed an appeal with the defendant CIVIL SERVICE COMMISSION. The COMMISSION without a hearing denied my appeal. I am temporarily being retained in my position because the POLICE DEPARTMENT requested the COMMISSION not to terminate me because of the outstanding quantity and quality of my work performance (Schedules "P", "L", "K", "G", "F", "E" and "D" annexed to complaint).

7. My probationary period expired on October 29, 1973. Pursuant to the Rules and Regulations of the Commission, I was required to serve a probationary period of six months. The Rules of the Commission have the force and effect of law and the Commission is bound by its own Rules. I could have been terminated within the six months period. However, it was incumbent

AFFIDAVIT OF ANNICK M. BERNS

upon the Commission to make a determination within that six months period. The Commission had my records and was fully aware of my schooling. The solution to this administrative problem lies with the Commission. If it needs more time to complete its investigation, all that would be required is an amendment to its Rules extending the period of probation.

8. There was no fraud committed by me. I am advised by my attorney that fraud may not be presumed. It may not be based on suspicion, conjecture, or doubtful inference. Fraud must be established by clear and convincing proof. There is no proof in this record of any fraud. Furthermore, nothing has been adduced by defendants to demonstrate that my Parochial schooling and graduation was not equivalent to New York City high school. The only reference thereto (Exhibit "6") refers to an alleged telephone conversation with a Ms Wolfe, French Embassy. This is totally insufficient and lacks probative force.

9. The educational system in France is different than that which exists in New York City. For example, in New York City children between the ages of 5 and 6 may attend Kindergarten. In France,

AFFIDAVIT OF ANNICK M. BERN

children between 2 and 6 may attend Ecole Mater-nelle which corresponds to Kindergarten. I attended these classes. It must be borne in mind that thereafter I enrolled in the Parochial School in 1949 and was graduated in 1957. Nevertheless, I continued my education in said school until 1959. In the school system in France, we have in effect two cycles of education. The first cycle of education is for children between the ages of 6 and 11. This is called Lycees. After four years of schooling those students who show academic talents or traits and characteristics which are superior to other students, are advanced and given secondary education. In the Parochial schools, secondary education can be completed in four years or less. I was considered a rapid progress student and was advanced to secondary education which I completed in four years. In June of 1957, after successfully completing eight years of continuous schooling at ECOLE-TRIVEE DE FILLES a Parochial School in Paris, I was graduated and received my Diploma.

10. In France, there is a screening period at the end of four years. Each student is carefully examined and a determination is made

AFFIDAVIT OF ANNICK M. BERNS

whether said student is sufficiently advanced for secondary education, and tests are also made to determine aptitude, vocational leanings and academic tendencies. I was considered a progressive student and was advanced to secondary education. As a secondary student which was equivalent to high school, my courses were not elementary. I took and successfully passed courses in Algebra, Chemistry, two foreign languages (English and Spanish), Geometry, Literature, Mathematics, World History, French History, Natural Sciences which included Botany, Music and Art. Upon my graduation in 1957, I continued my education at the ECOLE-PRIVEE DE FILLES until 1959, and all of the courses which I completed were of an advanced Academic nature.

11. In my application, I did submit a Certificate of Completion from the ECOLE-D'HOTESSES DE PARIS, where I completed Finishing Courses in Psychology, Current Events, Current Affairs, Politics and Poise.

12. On the law, the action of defendants is illegal and improper. On the facts, the record is barren of any fraud of a material nature. No credible evidence has been adduced to controvert

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AFFIDAVIT OF ANNICK M. BERNS

my contention that my secondary education in France
was equivalent to a local high school education.

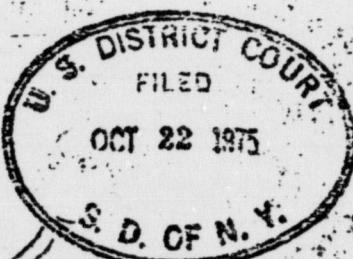
In any event, dismissal would be cruel and punitive.

/s/ ANNICK M. BERNS

(Jurat Omitted in Printing)

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JUDGMENT OF TENNEY, J.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNICK M. BERNES

Plaintiff

75 Civil 2068 (CHT)

-against-

JUDGMENT

CIVIL SERVICE COMMISSION, CITY OF
NEW YORK; ALPHONSE E. D'AMBROSE,
Personnel Director, Department of
Personnel; MICHAEL J. CODD, as
Police Commissioner, City of New York,
and HARRISON J. GOLDIN as Comptroller,
City of New York

Defendants

Plaintiff and defendants having moved for summary judgment,
pursuant to Rule 56, of the Federal Rules of Civil Procedure, and
the motions having come on to be heard before the Honorable Charles
H. Tenney, United States District Judge, and the Court thereafter on
October 21, 1975, having handed down its memorandum opinion,
denying defendants' motion, and granting plaintiff's motion, it is,

ORDERED, ADJUDGED and DECreed: That plaintiff ANNICK M. BERNES
have judgment against defendants CIVIL SERVICE COMMISSION, CITY OF
NEW YORK; ALPHONSE E. D'AMBROSE, Personnel Director, Department of
Personnel; MICHAEL J. CODD, as Police Commissioner, City of New
York, and HARRISON J. GOLDIN, as Comptroller, City of New York,
dismissing the complaint.

Date: New York, N.Y.
October 22, 1975

17-12-100

MICROFILM
100-10000
GT

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ANNICK M. BERNS,
Plaintiff,

-against-

CIVIL SERVICE COMMISSION, CITY OF
NEW YORK, ALPHONSE E. D'AMBROSE,
Personnel Director, Department of
Personnel, MICHAEL J. CODD, as
Police Commissioner, City of New York,
and HARRISON J. GOLDIN as Comptroller,
City of New York

Defendants.

-----x

S I R S:

NOTICE is hereby given that the defendants
hereby appeal to the United States Court of Appeals
for the Second Circuit from the judgment entered
herein on October 22, 1975 wherein it is adjudged
that the plaintiff have judgment against the defend-
ants.

Dated: New York, N.Y.
November 17, 1975

Yours, etc.,

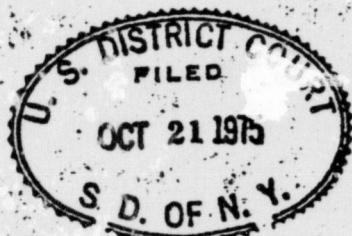
W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Office & P.O. Address:
Municipal Building
New York, N.Y. 10007

TO:

SAMUEL RESNICOFF, ESQ.
Attorney for Plaintiff By /s/
280 Broadway Carl Sanders
New York, New York 10007

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Copy



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANNICK M. BERNS,

Plaintiff, : 75 Civ. 2068 (CHT)

-against-

CIVIL SERVICE COMMISSION, CITY OF
NEW YORK; ALPHONSE E. D'AMBROSE,
Personnel Director, Department
of Personnel; MICHAEL J. CODD,
as Police Commissioner, City of
New York, and HARRISON J. GOLDIN,
as Comptroller, City of New York,

Defendants. :

MEMORANDUM

#43268

TENNEY, J.

This matter is brought before the Court on cross-motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons stated below, the plaintiff's motion is granted and the defendants' motion is denied.

This is an action for declaratory and injunctive relief. Plaintiff Annick M. Berns ("Berns") alleges a deprivation of her fourteenth amendment rights to procedural due process and equal protection. The action is brought pursuant to 28 U.S.C. § 1331; 28 U.S.C. §§ 1343(3) & (4); 28 U.S.C. §§ 1361 and 1391; 28 U.S.C. §§ 2201 and 2202; 42 U.S.C. §§ 1981 and 1983, and Rule 57 of the Federal Rules of Civil Procedure. A recitation of the facts is essential to a proper understanding of the matters at issue.

Plaintiff was born in France and attended school there.

She attended Ecole Maternelle, the equivalent of our kindergarten, and then matriculated at Ecole-Privee De Filles, a parochial school in Paris, in 1949. In 1957, she received the Certificat d'Etudes Primaires at Ecole-Privee De Filles. Her courses at that institution included, inter alia, Algebra, Chemistry, two foreign languages (English and Spanish), Literature, Mathematics, World History, French History, and Natural Sciences (which included Botany, Music and Art). After her graduation she continued her studies at that school until 1959, taking additional academic courses. Plaintiff also attended and received a Certificate of Completion from Ecole-D'Hotesse De Paris where she completed courses in Psychology, Current Events, Current Affairs, Politics, and Poise.

Late in 1962 plaintiff emigrated to the United States, and is now a resident of the State of New York and a citizen of the United States.

During December of 1972, the Civil Service Commission posted a Notice of Examination for Civil Service Examination No. 2251. The Notice of Examination called for applications to be submitted from December 1, 1972 to December 29, 1972. Plaintiff made application to take the exam and applied for the position of Police Administrative Aide which was offered through the exam.

The minimum requirements for applicants, as set forth in the Notice of Examination, are as follows:

"MINIMUM REQUIREMENTS: High school graduation or evidence of having passed an examination for a high school equivalency diploma or U.S. Armed Forces GED certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate; and either two years of paid full-time clerical experience, or two years of active military duty, or one year of full-time study (30 credits) in an accredited college or university, or an equivalent combination of experience and education. However, high school graduation or its equivalent as described above is required of all candidates.

"The minimum requirements must be met by the last date for the receipt of applications.

"All candidates who file applications will be summoned for the written test prior to the determination of whether they meet the minimum requirements. The experience papers of passing candidates only will be evaluated.

"Form A experience paper must be filed with the application." See Defendants' Exhibit "1" appended to the Answer.

In answer to the question in the application inquiring about the applicant's educational background, plaintiff stated that she had graduated from high school.

Plaintiff scored 86.3% on the examination (the passing score was 70%) and was placed on the list of eligibles. On April 30, 1973, plaintiff was appointed to the position of Police Administrative Aide. Plaintiff remained in a probationary status for six months and at the satisfactory completion of her probation, on October 29, 1973, she was retained in her position.

At the suggestion of the Civil Service Commission and

the Police Department, plaintiff took the New York State High School Equivalency Diploma Examination on March 26, 1974, and passed with a score of 276 (the passing score was 225). She was subsequently awarded a New York State Education Department High School Equivalency Diploma, 1974 Series.

Thereafter, on November 6, 1974, plaintiff was notified that she was found not to be qualified for her position by reason of her failure to meet the educational requirement. Plaintiff was not given a hearing prior to notification, but was advised of her right to file a written appeal with the Civil Service Commission. This she did on November 12, 1974, but the appeal was subsequently denied on February 29, 1975. No hearing rights attached at the appeal. Plaintiff has been retained in her position pending the outcome of the instant litigation.

Plaintiff contends that she truthfully answered all questions regarding her educational qualifications and that she was justified in answering as she did since her education in France was the functional equivalent of a high school education here. She points out that while the educational systems of the two countries are different, the course work which she completed in France was roughly the same as a high school curriculum in this country. Plaintiff has cited the diploma which she earned at Ecole Privee De Filles in support of her contention and in addition cites: (1) the advanced course work completed at that institution, (2) the course work completed at Ecole D'Hotesses

De Paris, (3) the grade of 86.3% which she received on the Civil Service Examination, (4) the grade of 276 which she received on the High School Equivalency Examination, and (5) the rating sheets indicating her consistently superior performance evaluations while employed as a Police Administrative Aide.

Plaintiff alleges that the defendants had full and accurate knowledge of her educational background before them; that she successfully completed her probationary period and became a tenured civil service employee; that she performed her assigned duties as a tenured employee in an exemplary fashion; and that the attempt to terminate her without a hearing prior to termination worked a deprivation of her constitutional rights in light of her tenured status. Also, she contends that the failure of defendants to promptly evaluate her application (the investigation was not instituted until March 11, 1974, and she was notified of her proposed termination on November 6, 1974, more than one year after she had allegedly acquired tenured status) works substantially to her prejudice and that defendants should be estopped at this late date from effecting the proposed termination. Plaintiff seeks a declaration that the proposed termination is unlawful, a preliminary and permanent injunction preventing defendants from effecting the proposed termination, and an award of damages.

Defendants point out that the Notice of Examination clearly stated that all applicants must have met the educational

requirements prior to the last date for the submission of applications on December 29, 1972. They allege that when plaintiff, in her application, stated that she did meet the requirements, she misrepresented the true state of the facts.

Defendants state that, due to the large number of applicants and the time consumed in processing the applications, it is impractical to investigate the qualifications of all applicants prior to appointment. Thus, appointments are made conditionally, subject to verification of the applicant's qualifications and the applicant signs a statement consenting to this procedure which is formalized in the New York State Civil Service Law § 50(4). That section states in pertinent part:

"4. Disqualification of applicants or eligibles. The state civil service department and municipal commissions may refuse to examine an applicant, or after examination to certify an eligible

"(a) who is found to lack any of the established requirements for admission to the examination or for appointment to the position for which he applies....

....
"No person shall be disqualified pursuant to this subdivision unless he has been given a written statement of the reasons therefor and afforded an opportunity to make an explanation and to submit facts in opposition to such disqualification.

"Notwithstanding the provisions of this subdivision or any other law, the state civil service department or appropriate municipal commission may investigate the qualifications and background of an eligible after he has been

appointed from the list, and upon finding facts which if known prior to appointment, would have warranted his disqualification, or upon a finding of illegality, irregularity or fraud of a substantial nature in his application, examination or appointment, may revoke such eligible's certification and appointment and direct that his employment be terminated, provided, however, that no such certification shall be revoked or appointment terminated more than three years after it is made, except in the case of fraud."

Plaintiff signed a statement consenting to the application of this statutory procedure.

Defendants contend that, had they been possessed of the requisite facts, they would not have made the appointment and that, since the notice of termination was sent within the three year period, the termination was valid and had the effect of terminating the appointment ab initio. It follows, they contend, that plaintiff never became tenured and never became entitled to the rights which accrue to a tenured employee such as the right to notice and a hearing prior to termination.

Defendants conclude that since plaintiff has failed to document to their satisfaction her compliance with the educational requirement prior to December 29, 1972, they have no choice but to terminate her. Assuming that the termination is lawful, they request the Court to grant summary judgment in their favor dismissing the complaint.

Rule 56(c) of the Federal Rules of Civil Procedure provides in pertinent part that summary judgment "shall be rendered forthwith if the pleadings ... together with the affidavits ...

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See generally Empire Electronics Co. v. United States, 311 F.2d 175 (2d Cir. 1962). The burden is on the moving party to demonstrate both the absence of any genuine issue of material fact and, also, that movant is entitled to judgment as a matter of law. Dean Construction Co. v. Simonetta Concrete Const. Corp., 37 F.R.D. 242 (S.D.N.Y. 1965).

The parties agree, and the Court finds, that the following facts are not in dispute. Plaintiff was born in France and did the bulk of her educational work there. She attended Ecole Maternelle and then matriculated at Ecole-Privee De Filles in 1949. She received the Certificat d'Etudes Primaires from that institution in 1957 and continued her studies there. Her course work included courses in Chemistry, Algebra, English, Spanish, Literature, Mathematics, World History, French History, and Natural Sciences. She also attended, and received a Certificate of Completion from the Ecole-D'Hotesse De Paris, a type of finishing school where her courses included Psychology, Current Events, Current Affairs, Politics, and Poise. Then, in 1962, plaintiff emigrated to the United States.

From the date of her arrival here in 1962 until the date of the Civil Service Exam in 1972, plaintiff held a variety of secretarial jobs and attended the New York Institute of Finance and the Kroc Institute. She took the Civil Service Exam in que-

tion, passed comfortably, and was appointed from the list of eligibles. On her application for the exam she stated that she possessed a high school education. Plaintiff was appointed to the position of Police Administrative Aide on April 30, 1973, successfully completed her probationary period on October 29, 1973, and, until she was notified that she was marked not qualified on November 6, 1974, she fulfilled all duties and obligations attaching to her position in a manner which earned her consistently superior ratings. Also, during this period of time she took, and handily passed, the New York State High School Equivalency Diploma Examination and was awarded a diploma.

Defendants' contention is that plaintiff is not, in fact, a high school graduate. Plaintiff, of course, contends that she has attained that status. The Court clearly recognizes that "[o]n summary judgment the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Nevertheless, while the proper determination of plaintiff's educational status is certainly a material factual determination, the Court must conclude that defendants have not raised a genuine issue as to this material fact. The only possible inference which can be drawn from the facts outlined above is that, while the French and American educational systems are not functional equivalents for the purpose of facilitating a ready comparison, the plaintiff was cer-

tainly possessed of a degree of education which entitled her to answer the question regarding her education as she did. Her high achievement on all competitive examinations and her accomplished performance of her police duties buttresses and makes this inference inescapable.

Both plaintiff and defendants agree that plaintiff's termination was carried out in summary fashion and without the benefit of a hearing. The summary dismissal of a tenured public employee has been held to be a violation of the fourteenth amendment's guarantees of procedural due process. Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); Vega v. Civil Service Commission, City of New York, 385 F. Supp. 1376 (S.D.N.Y. 1974).

Plaintiff has carried the burden of proving the absence of any genuine issue of material fact and that she is entitled to a judgment as a matter of law.

"Having satisfactorily completed [her] probationary period and achieved permanent tenured status, plaintiff's 'property interest' in [her] job was entitled to the full panoply of procedural safeguards afforded by the Fourteenth Amendment. Board of Regents v. Roth, supra, Perry v. Sindermann, supra. Vega v. Civil Service Commission, City of New York, supra, 385 F. Supp. at 1382.

The Court is compelled to make two observations at this point. Initially, it should be noted that while the Civil Service Commission was in possession of plaintiff's application on or before December 29, 1972, they did not begin the background in-

vestigation until March 11, 1974, some fifteen months later (and six months after plaintiff had achieved tenure). The investigation, once begun, resulted in the proposed termination on November 6, 1974, a span of less than eight months. While the Court need not dispose of plaintiff's estoppel argument, it is impelled to point out that this type of delay in instituting the investigation seems unwarranted. Once begun, the investigation was concluded fairly expeditiously despite the fact that verification of many entries had to be sought from sources in France. A prompt initiation of the inquiry herein may well have obviated the question at issue.

Secondly, due to the unusual nature of the problem presented in this case, this opinion is to be read narrowly and not to be extrapolated beyond the precise factual situation presented herein.

Accordingly, plaintiff's motion for summary judgment is granted. Her proposed termination is declared to be unlawful and defendants are permanently enjoined from terminating her employment for failure to meet the educational requirement. No award of damages is justified in this instance since plaintiff has been retained in her position pending the outcome of this litigation. Also, defendants' motion for summary judgment is denied.

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So ordered.

Dated: New York, New York
October 17, 1975

CHARLES H. TENNEY

U.S.D.J.

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

State of New York, County of New York, ss.:

JAMES BURNS

being duly sworn, says, that on the 14th day of Jan, 1976,
at No. 280 - BROADWAY in the Borough of MARSH in The City of New York, he served three copies
of the annexed JOINT APPENDIX upon SAM RESNICKOFF Esq.
the attorney for the PLTFF-APPELLANTS in the within entitled action by delivering
three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
leaving the same with him.

Sworn to before me, this 14
day of Jan - 19 76

James Burns

CARLOS M. RODRIGUEZ
Commissioner of Deeds
City of New York No. 2-2803
Certificate Filed in New York County
Commission Expires October 1, 1977

Form 321-1M-1120058(57)